CLERK'S COPY.
114
5782
2 C.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 29

No. ~~612~~ 19

ALEXANDER SPRUNT & SON, INC.; ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

FILED DECEMBER 31, 1928

(33,921)

(33,921)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 612

ALEXANDER SPRUNT & SON, INC.; ANDERSON, CLAYTON & CO., HOUSTON COMPRESS COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS COTTON TRADE ASSOCIATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS

VOL. I

INDEX

	Original	Print
Record from the district court of the United States, Southern Texas	1	1
Stipulation re transcript of record	1	1
Caption (omitted in printing)	3	
Bill of complaint and order thereon	4	3
Exhibit "A"—Respondents in I. C. C. Docket Nos. 14940, 13991 and 11965	27	36
Exhibit "B"—Report and order of Commission, Docket Nos. 14940 and 13991, June 23, 1925	29a	40
Exhibit "C"—Order reopening proceeding No. 11965.	38	53
Exhibit "D"—Order reopening proceedings Nos. 14940 and 13991	38a	54

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 11, 1929

	nal	Print
Exhibit "E"—Report and order of Commission, Docket Nos. 14940, 13991 and 11965, April 4, 1927.	39a	55
Order of court calling to his assistance a circuit judge and a district judge	56	82
Rule to show cause	57	82
Application of Arkansas Cotton Trade Association et al. for permission to intervene	58	83
Application of Oklahoma State Cotton Exchange for leave to intervene	61	85
Order granting permission to Arkansas Cotton Trade Association, Texas-Oklahoma Compress Association, and Oklahoma State Cotton Exchange to intervene	64	87
Petition in intervention of Arkansas Cotton Trade Association and Texas-Oklahoma Compress Association.	66	88
Petition in intervention of Oklahoma State Cotton Exchange	74	96
Intervention of Interstate Commerce Commission	79	100
Answer of Interstate Commerce Commission	80	101
Answer of the United States of America	83	103
Petition of intervention of Galveston Cotton Exchange and Board of Trade and Galveston Chamber of Commerce	90	110
Petition of Manchester Terminal Corporation for leave to intervene	95	114
Petition of intervention of Manchester Terminal Corporation	98	116
Exhibit "A"—Application for leave to intervene before I. C. C.	104	119
Order consolidating causes	113	126
Petition of New Orleans Joint Traffic Bureau for leave to intervene	114	127
Petition of Houston Cotton Exchange and Board of Trade for leave to intervene	117	129
Order granting preliminary injunction	120	130
Opinion, Hutcheson, J	121	131
Final order dissolving injunction and dismissing the bills	132	142
Application for appeal and order allowing same and fixing bond	134	143
Assignment of errors	136	144
Bond on appeal	(omitted in printing)	152
Affidavit of J. H. Tallichet	155	157
Affidavit of W. L. Cook	157	158
Orders granting extension of time to file record	159	159
Clerk's certificate	168	164
Citations and services	(omitted in printing)	169
Statement of evidence	1	164
Offers in evidence	2	165
Narrative of proceedings before I. C. C. No. 13991	4	167

	Original	Print
Testimony of James Witherow	5	167
C. T. Kennedy	8	169
A. W. Dunham	9	170
H. Booth	10	171
Arthur H. Fonda	11	171
V. R. Aston	15	174
R. V. Gillespie	22	179
Horace Booth	26	182
J. S. Hershey	30	185
J. D. Martin	31	186
E. M. Warrenberger	33	188
J. F. Garvin	35	189
J. L. West	35	189
A. L. S. Toombs	40	193
F. R. Dalzell	41	194
I. M. Griffin	42	195
E. H. Thornton	43	196
Narrative of proceedings before I. C. C. Nos. 13991 and 14940	46	198
Testimony of Lawrence B. McCord	46	198
J. H. W. Steele	58	207
Lawrence Westbrook	63	211
Bayliss E. Harriss	64	213
D. C. Reed	70	217
K. Tidemann	74	220
A. S. L. Toombs	76	222
I. M. Griffin	78	224
I. H. Kempner	87	230
Emil Eggers	93	234
H. K. Knowles	94	235
T. M. Nowlin	95	236
Horace Booth	98	238
J. S. Hershey	106	244
J. O. Hamilton	110	247
F. E. Potts	111	248
E. H. Thornton	112	249
Horace Booth	133	265
J. S. Hershey	134	265
K. E. Womack	136	267
H. H. Haines	142	272
H. M. Crosswell	149	276
J. L. Jones	154	279
W. L. Van Liew	156	281
J. Garrison	157	282
J. V. Scott	158	282
C. S. Kinney	170	290
Benjamin Clayton	174	293
J. L. West	213	320
F. R. Dalzell	228	331
R. V. Gillespie	252	348

	Original	Print
Testimony of J. L. West (recalled)	262	355
Horace Booth (recalled)	263	356
Carl Giessow	264	356
E. H. Lockenberg	280	369
Ralston F. Green	286	375
H. Jepperson	288	377
E. E. Bowman	291	379
Ralston F. Green (recalled)	292	380
F. Cockrell	292	381
T. Hugh Curley	295	383
J. D. Webb	296	384
W. H. Stakelum	297	385
Henry Lampe	299	385
M. T. Sprague	300	286
E. R. Thornton	301	387
Narrative of proceedings before I. C. C. Nos. 14940, 13991, and 11965	301	387
Statement of examiner	301	387
Testimony of B. M. Bloomfield	302	388
J. T. Stockton, Jr	311	394
C. B. Fox	317	399
S. A. Dunlap	325	404
E. P. Fowler	333	409
W. C. Hunt	334	410
T. E. Judkins	336	412
F. R. Dalzell	343	417
J. T. Stockton, Jr. (recalled)	387	453
J. R. Aston	395	460
J. V. Scott	399	463
C. T. Schnell	415	478
W. L. Clayton	421	482
H. A. Ahlers	461	516
F. R. Dalzell	464	518
S. W. James	472	524
O. J. Brown	475	526
J. M. Smith	476	527
C. A. Mitchell	481	531
W. Scott Hammond	504	549
C. P. Walker	508	554
E. H. Lockenberg	513	559
C. A. Stang	518	563
J. T. Stockton, Jr	522	567
C. A. Mitchell	523	567
E. B. Gaines	525	569
J. M. Locke	528	572
H. W. Moorhouse	537	579
Harry Williams	540	582
T. M. Edwards	542	584
J. J. Morrissey	556	594
T. M. Edwards (recalled)	559	597
W. D. Farris	564	601

	Original	Print
Testimony of W. D. Haas	566	603
S. E. Houston	574	608
L. M. Shepardson	585	618
George S. Pecot	587	620
C. A. Mitchell (recalled)	599	633
E. H. Lockenberger	604	637
C. B. Bee	607	639
J. L. Smithwick	612	645
W. J. Jolley	613	645
George E. Drewery	614	646
W. S. Turner	619	650
W. J. Neal	621	652
R. Q. Lee	629	660
G. S. Weitzenhoffer	629	661
A. J. Stone	631	662
I. M. Griffin	642	671
H. M. Bennett	701	727
F. J. Herbelin	711	735
J. K. Moore	714	737
E. H. Thornton	742	761
J. K. Moore (recalled)	757	774
E. H. Thornton (recalled)	757	774
H. B. Cummins	768	783
J. A. Bowden	803	813
S. G. Reed	806	815
W. B. Drake	844	844
E. A. O'Donnell	851	851
C. C. P. Rausch	854	853
J. A. Lynch	867	864
W. H. Stakelum	876	871
R. C. Fulbright	885	878
S. E. Walker	893	884
T. B. Keenan	905	895
S. M. Blok	910	898
H. A. Ahlers	914	902
C. B. Fox	916	904
B. N. Graham	919	907
J. V. Scott (recalled)	920	908
D. Sumners	920	908
F. D. Dalzell (recalled)	925	913
E. H. Lockenberg (recalled)	934	921
S. E. Walker (recalled)	938	924
J. V. Scott (recalled)	938	924
J. T. Stockton, Jr	941	926
J. K. Moore (recalled)	942	927
Stipulation re statement of evidence	950	933
Order approving statement of evidence	952	934
Clerk's certificate (omitted in printing)	953	
Statement of points to be relied upon and stipulation as to printing record	954	935

[fol. a-1] Stipulation for Transcript Filed Dec. 17, 1928

IN UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

In Equity. No. 310. Consolidated

ALEXANDER SPRUNT & SON, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

STIPULATION RE TRANSCRIPT OF RECORD—Filed Dec. 17, 1928

It is hereby stipulated by the parties, including the intervenors, acting by their respective counsel, for the purpose of indicating the portions of the record to be included in the transcript of record that the following and no other papers shall be included:

(1) Bill of Complaint.

(2) Order of Court calling to his Assistance a Circuit Judge and a District Judge to hear and determine this case.

(3) Rule to show cause.

(4) Application of Arkansas Cotton Trade Association and Texas-Oklahoma Compress Association for permission to intervene.

(5) Application of Oklahoma State Cotton Exchange for permission to intervene.

(6) Order granting permission to Arkansas Cotton Trade Association, Texas-Oklahoma Compress Association and Oklahoma State Cotton Exchange to Intervene.

(7) Intervention and Answer of Arkansas Cotton Trade Association, Texas-Oklahoma Compress Association and Oklahoma State Cotton Exchange.

(8) Intervention of Interstate Commerce Commission.

(9) Answer of Interstate Commerce Commission.

(10) Answer of United States of America.

(11) Intervention of Galveston Cotton Exchange and Galveston Chamber of Commerce.

(12) Intervention of Manchester Terminal Corporation.

(13) Order Consolidating Causes.

(14) Petition of New Orleans Joint Traffic Bureau to Intervene.

(15) Petition of Houston Cotton Exchange to Intervene.

(16) Statement of the proceeds at New Orleans, Louisiana, July 12th and 13th, 1927, before the Court and Exhibits referred to therein.

(17) Narrative of the Proceedings before the Interstate Commerce Commission in Docket 13991—Weatherford-Crump & Co., Complainants vs. Abilene & Southern R. R. Company, et al, Defendants and in Docket 14940—Application of Rates on Cotton to Gulf Ports and Exhibits one to nine inclusive and A-1 to A-218 inclusive, to be sent to the Supreme Court in their original form.

(18) Order granting preliminary injunction.

(19) Opinion of Court December 2, 1927.

(20) Final Order of Court dissolving temporary injunction and dismissing the bills.

[fol. 2] (21) Notice of Appeal.

(22) Assignments of Error.

(23) Citation on Appeal.

(24) Bond.

(25) Affidavits of J. H. Tallichet and W. L. Cook Counsel for plaintiffs in Equity No. 311, electing not to appeal.

(26) All orders for extension of time for filing record.

(27) Stipulation of parties concerning correctness of narrative of testimony and concerning exhibits.

(28) Order of Court approving statement of evidence and ordering original exhibits forwarded to Supreme Court.

(29) This stipulation.

Said transcript to be prepared as required by law and the rules of the Supreme Court of the United States.

R. C. Fulbright, Counsel for Appellants. Elmer B. Collins, Special Ass't to the Atty. General, for the United States of America. J. Stanley Payne, Solicitor for Interstate Commerce Commission. A. L. Reed, Counsel for Arkansas Cotton Trade Ass'n et al.; C. B. Cochran, Counsel for Oklahoma State Cotton Exchange, Counsel for Intervenors, Appellees.

[File endorsement omitted.]

[fol. 3] [Caption omitted]

[fol. 4] [File endorsement omitted]

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed July 1, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

Alexander, Sprunt & Son, Inc., a North Carolina corporation doing business and with its office and place of business in Houston, Harris County, Texas; Anderson, Clayton & Co., a joint stock association organized under the laws of the State of Texas with its principal office and place of business in Houston, Harris County, Texas; Houston Compress Company, a Texas corporation with its principal office and place of business in Harris County, Texas; Ship Channel Compress Company, Inc., a Texas corporation with its principal office and place of business in Harris County, [fol. 5-a] Texas; Texas Farm Bureau Cotton Association, a co-operative marketing association organized under the laws of Texas with its principal office and place of business at Dallas, Dallas County, Texas, and with an office in Harris County, Texas; Turning Basin Compress Company, a Texas corporation with its principal office and place of business in Houston, Harris County, Texas and Weatherford, Crump & Co., a Texas corporation, with its principal office and place of business in Houston, Harris County, Texas, respectfully bring this, their Bill of Complaint, against the United States of America on behalf of themselves and on behalf of such other persons, firms and corporations as have an interest herein and may, by proper proceedings, become parties hereto, and do hereby sue to enjoin, set aside, suspend and annul an order, hereinafter described, of the Interstate Commerce Commission, a Commission existing by virtue of an Act of Congress of February 4, 1887, entitled: "An Act to Regulate Commerce," and the acts amendatory thereof and supplementary thereto.

I

Plaintiffs hereinafter sometimes called petitioners, are engaged, among other things, in making and receiving shipments of cotton in bales in interstate and foreign commerce over and upon the lines of the various railroads operating as common carriers for hire and serving the States of Texas, Oklahoma, Arkansas and Louisiana, from points upon said railroads in said states to or through Houston, Galveston and Texas City, Texas, and other points in the State of Texas upon the Gulf of Mexico, and New Orleans, Louisiana, and other Gulf Ports, and also in the shipment [fol. 6] of cotton in intrastate commerce between points within the State of Texas and upon the lines of the railroads engaged in transporting such shipments of cotton as common carriers for hire between points in said State.

II

That the railroads upon which such shipments of cotton are made also transport shipments of cotton for other persons, firms and corporations engaged in the business of buying, selling and shipping cotton in interstate and foreign commerce and in intrastate commerce within the territory hereinabove described and in making shipments to and through the same ports as are used by your petitioners herein and such other firms, persons and corporations are engaged in competition with plaintiffs herein in purchasing or assembling shipments, selling, marketing and delivering cotton and utilizing the other means of transportation in connection with such business, and your petitioners are interested in and desirous of obtaining or procuring the shipment and movement of cotton in such commerce at the lowest reasonable rates of freight which may be lawful and consistent with the services performed.

III

That the railroads engaged as common carriers for hire in the transportation of the cotton traffic hereinabove referred to, operate in said states and between points in said [fol. 6-a] states and in adjoining states, such as Tennessee and Mississippi, in transporting such cotton from the cotton producing territory in Texas, Oklahoma, Arkansas and

Louisiana, west of the Mississippi River, to the various Gulf Ports above mentioned, being the Cities of Houston, Texas City and Galveston, Texas, and New Orleans, Louisiana, and other cities upon the Gulf of Mexico, and said common carriers operate subject to the Interstate Commerce Act, as aforesaid, in such interstate and foreign commerce, and where made respondents in the proceeding before the Interstate Commerce Commission hereinafter more specifically described, and where commanded to do and perform the things complained of hereinafter, under and by virtue of the order or orders hereinafter described and a list of such common carriers who were named and made as respondents or parties to said proceedings before the Interstate Commerce Commission is hereto appended and marked Exhibit "A" and made a part hereof. In some cases the railroads are at the present time being operated by corporations successors to parties named in such Exhibit, but the said successors are subject to the jurisdiction and orders of said Commission.

IV

Petitioner, Texas Farm Bureau Cotton Association, is particularly engaged in assembling, shipping, selling, marketing and delivering cotton for its members who are producers of cotton located at various points throughout the State of Texas, and make such shipments through various ports, but such cotton is for the most part shipped to and assembled at warehouses in the City of Houston, Texas, where the shipments find their destination and are [fol. 7] placed in stock, and after being so assembled portions thereof are later shipped out to various destinations and through various channels. Petitioners, Alexander, Sprunt & Sons, Inc., Anderson, Clayton & Company, and Weatherford, Crump & Company, are cotton merchants engaged in buying, selling and shipping cotton in the commerce aforesaid, and through the various ports and likewise maintain at City of Houston and elsewhere stocks of cotton which are shipped from points in Texas, Oklahoma, Arkansas and Louisiana, west of the Mississippi River, to Houston, Texas, over the lines of said railroads and delivered to such petitioners at Houston, Texas, which said destination is within the southern district of Texas and within the jurisdiction

of this court, and petitioners, Houston Compress Company, Ship Channel Compress Company and Turning Basin Compress Company, are in the business of receiving shipments of cotton at warehouses owned by such companies in the City of Houston, Texas, and in making shipments for their customers from the said City of Houston and in providing warehouse and merchandising facilities for shipments of cotton made by petitioners and in delivering shipments of cotton for the owners thereof to wharves and docks which are located in the Port of Houston and in delivering the same to said companies in behalf of plaintiffs and in behalf of other persons, firms and corporations.

V

The defendant, United States of America, is being sued by the express authority of the Congress as set forth in the Act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," 38 Statutes at Large, 219.

VI

[fol. 7-a] This suit is brought to enjoin, set aside, suspend and annul an order of the Interstate Commerce Commission. It arises under the Constitution and laws of the United States, particularly under the commerce clause of the Constitution and the Fifth Amendment thereof, and under the Interstate Commerce Act and is instituted under the provision of the Interstate Commerce Act and the Act of October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," and also under the general equity jurisdiction of this court.

VII

The orders of the Interstate Commerce Commission, brought in question in this suit were made pursuant to certain proceedings and hearings, being, first, a formal complaint filed with the said Commission by Weatherford, Crump & Company as complainant against Abilene & South-

ern Railway Company and various other Railroad Companies including the principal railroad companies named herein and being docketed as docket 13991 on the Docket of the Interstate Commerce Commission and, second, an investigation instituted by the Interstate Commerce Commission, entitled: "Application of Rates on Cotton to Gulf Ports," shown on its docket as 14940, and further a reopening as to certain features of a former proceeding before the Interstate Commerce Commission which had been brought by the Galveston Commercial Association and Houston Cotton Exchange and others, as complainants, against the Alabama & Vicksburg Railway Company and [fol. 8] various other railroad companies, including the railroads named in this cause, as defendants and docketed as No. 11965 on the Docket of the Interstate Commerce Commission will be herein referred to as "THE COMMISSION," the first proceeding above mentioned as 13991, the second as 14940 or the Shipside Case and the third, as 11965. The character of the proceedings is as follows:

13991 involved allegations as to unlawful discrimination and prejudice as to rates on cotton moving from interior points in Texas and other states to Galveston for export with stoppage in transit under transit privileges at Houston upon which export shipments higher rates were assessed than were being concurrently assessed by the carriers for shipments moving into Galveston under domestic bills of lading as a result of which it was alleged that the making of such higher charges against the complainant making the export shipments was discriminatory and that by reason thereof the plaintiffs suffered damage. The nature of this proceeding was succinctly stated in the first decision of the Interstate Commerce Commission rendered in 13991 and 14940 under date of June 23, 1925, and reported at 100 I. C. C. Reports page 159. The following language is shown at page 162 of the published report:

"That complaint was presented by a warehouse company at Houston, which merchandised or compressed cotton at that point and then reshipped it under transit provisions to Galveston for export. Such cotton moved under through export bills of lading from Houston and the higher export rates were assessed. As before pointed out, cotton consigned to the compresses located on the piers at Galves-

ton would move in under domestic bills of lading and the lower domestic rate would be assessed. Complainant in No. [fol. 8-a] 13991 contended that the services rendered by the carriers on shipments of cotton merchandised or compressed at its facilities in Houston, and then forwarded on export bills of lading through Galveston, was substantially similar to that afforded in connection with shipments consigned to the wharf compresses at Galveston, and that the charging of the higher export rates on its shipments constituted undue prejudice with resultant damage for which reparation is sought. Unreasonableness was also alleged, but that allegation was withdrawn at the hearing."

A hearing was held in 13991 but before any decision was rendered therein the Commission instituted the investigation known as 14940. Request for the investigation and the character of the same is aptly and correctly described in the same decision above referred to and in the following language shown at pages 162 and 163 of the published report of the Commission:

"Following the hearing in No. 13991, we received communications from cotton interests at Galveston and interior Texas points stating that large warehouses had been constructed on the water front at Houston, and that the collection of the lower domesic rates on cotton going to those warehouses unduly preferred them to the prejudice of the uptown and interior warehouses. The question of the legality of applying the lower domestic rates on cotton going to the water-front facilities was also raised and we were asked to institute a general investigation into the whole situation. Accordingly, on June 30, 1923, the order in No. 14940 was issued, instituting a general investigation concerning the lawfulness and propriety of the practices of carriers in connection with the application of interstate domestic rates and export rates on cotton from points in Oklahoma, Arkansas, Texas, and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, [fol. 9] Houston, Texas City, Beaumont, and Port Arthur, Tex., New Orleans, La., and Mobile, Ala., including subports of any of said ports, with a view to determining:

" '(1) Whether the practices now alleged to be followed by certain carriers and shippers in applying domestic rates,

which are lower than the corresponding export rates, on cotton delivered to water-front warehouses and subsequently exported are authorized by existing tariffs, or whether such practices, or any of them, constitute illegal practices; and

"'(2) Whether any change should be made in existing tariff regulations or rates in order to avoid and remove such undue preference, if any, that results or may result in favor of said water-front shippers or localities, and such undue prejudice, if any, that results or may result against said uptown shippers or localities, or any other undue prejudice against or undue preference of any other shippers or localities that may be found to exist.'

"No. 13991 was reopened and consolidated with the general investigation. Similar investigations were instituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the application of the intrastate rates in those States, and the hearings were held jointly with those commissions."

Hearings were held upon the foregoing questions in October, 1923, after which the Commission rendered its decision and order under date of June 23, 1925, a copy of which is hereto attached (omitting list of appearances and list of parties) and marked Exhibit "B" and made a part hereof.

After this decision and order petition was filed by Weatherford, Crump & Company for a re-opening and further hearings with respect to the question of awarding [fol. 9-a] reparation for damages claimed by Weatherford, Crump & Company, which petition was denied by the Commission by an order dated October 5, 1925. The question of reparation for damages has not been further raised in the proceeding and is not brought in issue in this suit.

The order of June 23, 1925, was originally issued to become effective October 12, 1925, but by various subsequent orders the Commission postponed the effective date thereof to February 12, 1926, and later postponed the same indefinitely as will be hereafter shown.

Under date of August 12, 1925, the carriers who were defendants or respondents in the above proceeding filed a petition with the Commission setting up that they could not carry out the order of the Commission of June 23, 1925,

without violating the order which had theretofore been issued by the Commission on February 2, 1923, in Docket 11965, for the reason that said order of June 23, 1925, commanded the carriers to establish one rate to apply on both local, domestic and export shipments of cotton moving from points in Oklahoma, Arkansas, Texas and Louisiana (on and west of the Mississippi River) to Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas; whereas, in docket 11965 the Commission had ordered certain relationships of rates on cotton to be established by the carriers from points in Arkansas and Louisiana to New Orleans on the one hand and to Houston, Galveston and Texas City on the other hand and that in order to carry out the later orders of the Commission it would be necessary to modify the orders and authority in 11965 and therefore request was made that 11965 be reopened for the purpose of determining whether or not the order therein should be modified so as to permit of a readjustment of rates to comply with the order and findings in dockets Nos. [fol. 10] 13991 and 14940. Following this petition the Commission under date of December 28, 1925, issued its order of reopening 11965 only as to the question of modification of the order insofar as might be necessary to comply with the findings and order in 14940 and 13991 as is set forth by copy of such order heretofore attached and marked Exhibit "C" and made a part hereof.

The Commission's decision in 11965 is reported in 77 I. C. C. Reports pages 388 to 414, inclusive. In said proceeding there was brought in issue the question of the reasonableness of the rates on cotton from points of origin in Oklahoma, Arkansas and Louisiana to Houston, Galveston and Texas City for local delivery and for shipside delivery, both domestic and export, and also the relationship of rates with rates on similar traffic from the same points of origin to New Orleans, Louisiana and Mobile, Alabama. Rates from Tennessee and Mississippi were also brought in issue, but they are not germane to this proceeding. In that case the Commission found that the export rates applying to shipside from points in Oklahoma to Houston, Galveston and Texas City were reasonable rates and that the local rates applying to such points were and would be unreasonable to the extent that they exceeded rates which were five cents less than said export rates, as a result of

which carriers established local rates five cents under the export shipside rates, which export shipside rates included additional services incident to export traffic and not required for local traffic, among which were additional free time privileges, delivery of shipments upon wharves within reach of ship's tackle and the payment of wharfage upon such shipments. The Commission found that the rates from points in Arkansas to Galveston, Houston and Texas City were unreasonable to the extent that they exceeded a certain differential relationship therein prescribed with [fol. 10-a] the existing rates applicable from such Arkansas points to New Orleans. The Commission also found that rates from the central portion of the State of Louisiana to Galveston and Houston should be no higher than the rates to New Orleans, and that certain differentials should be made from western Louisiana in favor of Galveston and Houston and certain differentials in favor of New Orleans as to eastern Louisiana, except the territory immediately adjacent to New Orleans, and thereafter the Commission prescribed in greater detail the Louisiana adjustment in a proceeding growing out of Docket 11965 and known as I. & S. Docket 1858, decided November 23, 1923, and reported at 85 I. C. C. Reports, page 5. As a result of the foregoing proceedings, 11965 and its allied cases, the carriers established rates which were according to the decisions and order of the Commission reasonable rates applicable to Houston, Galveston and Texas City from points in Oklahoma, Arkansas and Louisiana. The investigation in 11965 dealt particularly with the reasonableness of the rates and also with the relationship of the rates as between New Orleans on the one hand and the Texas ports named on the other hand, and it further dealt with the reasonableness of the local rates to the Texas destinations as well as with the export shipside rates including wharfage. The rates established pursuant to that order were in effect at the time of the hearings and particularly the last hearings in 13991 and 14940 and under the decision and order of the Commission in 11965, the publication of any higher rates to Houston, Galveston and Texas City for local delivery than the rates fixed by such order would be unreasonable and unlawful in violation of section 1 of the Interstate Commerce Act. In reopening 11965 the Commission did not in terms specify that the reasonableness of the rates was re-

opened and later ruled that the question of the reasonable-
[fol. 11] ness was not reopened, but only as to the questions of discrimination and preference or relationship of the rates.

Prior to the issuance of the order reopening 11965 the Houston Cotton Exchange and Board of Trade and the Chamber of Commerce of Houston, Texas, voluntary commercial organizations of which certain of these plaintiffs are members, filed a petition for reopening and further hearing of the consolidated cases in 13991 and 14940 setting forth that in its prior consideration the Commission had not made investigation of the relative advantages and disadvantages, preferences and discriminations as between shippers located at the ports such as plaintiffs in this cause and shippers located in the interior or as to the transit privileges, rules and regulations, including allowances given by defendant railroads at interior points and prayed that the investigation be broadened so as to include all such transit privileges, allowances, rules, regulations and practices applied by the defendant railroads at the interior points as well as to the ports and this petition was granted by the Commission through the issuance of its order dated December 28, 1925, hereto attached and marked Exhibit "D" and made a part hereof, by which it is noted that the effective date of the prior order in 13991 and 14940 was indefinitely postponed. It is noted that this order was of the same date as the order in 11965 and that the latter order (Exhibit "C") ordered that 11965 be heard in connection with 14940 and 13991. Later joint hearings were ordered and held in the months of April, May, and June, 1926, at Houston and Dallas, Texas, and New Orleans, Louisiana, and following these hearings the Commission issued its further decision and order hereinafter described and complained of.

[fol. 11-a] From the foregoing orders of investigation and the issues as raised in 13991, it will be seen that the Commission has held hearings upon the issue as to whether or not the practices being followed by the defendant carriers and shippers in applying domestic rates on cotton moving from the interior to Houston, Galveston and other points, which are lower than the corresponding export rates on cotton delivered to shipside at the ports for export, constitute

illegal practices and result in unjust discrimination or undue prejudice on the one hand or undue preference on the other as between shippers using facilities at or near the water front at such ports and shippers located elsewhere and as between localities involved in such investigation and that in addition thereto in the later hearing under the order of investigation dated December 28, 1925, there was set for investigation a determination of what services are accorded and what charges, payments or allowances are made by carriers in connection with the handling of cotton at interior points, including payments for compression, and whether such services, charges, payments or allowances result in unjust discrimination or undue prejudice or preference and what changes should be made in such services, charges, payments or allowances. In interpreting the orders and defining the issues in such investigations the Commission adjudged that the reasonableness of the rates on cotton was not in issue and in its decision and order hereinafter described and complained of, the Commission affirmatively finds that the reasonableness of the rates was not in issue, but the question of the relation of rates, the discriminatory or preferential character of rates, rules, regulations and practices was in issue in the investigation.

[fol. 12] VIII

That after its order of December 26, 1925, broadening the investigation and reopening the proceedings as above set forth and after the further hearings hereinabove referred to the Commission issued its report, decision and order, under date of April 4, 1927, reaffirming its prior order of June 23, 1925, but modifying it to the extent necessary to comply with its order in connection with said decision of April 4, 1927, all of which report, decision and order (omitting appearances and list of parties) are set forth in Exhibit "E" hereto attached and made a part hereof; said order was made to become effective June 16, 1927, and by later order on June 2, 1927, was postponed to become effective July 16, 1927. The said exhibits "B" and "E" together constitute the order complained of in this case.

That the parties hereto while not admitting the reasonableness, correctness or legality of the Commission's findings and orders of June 23, 1925, and April 4, 1927, do not

challenge that portion of the findings and orders which relate to the rules, regulations and practices being followed by the defendant carriers at interior points including the various other services set forth and dealt with in that portion of the said decision of April 4, 1927, under the headings of "Concentration and Compression at Interior Points" but in this suit challenge only the findings and order of the Commission insofar as the same deals with the aggregate through rates and the rules, regulations and practices at the ports. Where the order of the Commission is mentioned in this bill it shall be taken to mean the orders set forth in Exhibits "B" and "E," which orders incorporate, as a part thereof, the decisions set forth in said Exhibits.

[fol. 12-a] X

The records and the decisions of the Commission in this case disclose the general character of the traffic and the general nature of transportation services involved in the proceeding. The investigation embraced cotton traffic originating in Texas, Oklahoma, Arkansas and in that part of Louisiana west of the Mississippi river and moving to various Gulf Ports, among which the most important cotton ports are Houston and Galveston, Texas, and New Orleans, La. Cotton moves beyond the Ports by water to various foreign countries and to some extent by water to Atlantic Seaboard Ports where it is again moved by rail to various cotton mills. Cotton also moves from such ports via all rail movement to various destinations in the United States or to other Ports. Cotton also moves from the various points of origin in the interior via all rail movement to various destinations in the United States. Cotton is first prepared for transportation at the point of production by being put up in rectangular bales at country cotton gins with a density of approximately 11 pounds per cubic foot and an average weight of about 520 pounds, although the bales are commonly referred to as being 500 pounds. Such bales are spoken of as uncompressed cotton or flat cotton. These uncompressed cotton bales may be placed in hydraulic presses and compressed to a density of 22½ pounds per cubic foot and these are called standard density bales or compressed cotton. Frequently, uncompressed bales or

standard compressed bales are further compressed to a density of approximately 33 pounds per cubic foot and these are called high-density bales or compressed cotton. A small amount of cotton is put up in round bales at the gin with a density of approximately 33 pounds per cubic foot at the point of origin—such round bales move and are commonly classed as "compressed cotton."

[fol. 13] Cotton mills generally purchase cotton in lots of 100 bales or multiples thereof although there are some purchases of 50-bale lots. These lots usually must be made of cotton of one particular grade, staple or type. There are numerous grades, staples and types of cotton and in order to obtain 100-bale lots of particular grades, it is necessary for the cotton merchants or shippers to assemble numerous bales of cotton at a particular point where they will classify and grade the cotton and obtain therefrom even-running lots of particular grades. This is a process of merchandising by which the bales of cotton move into a common stock and are prepared for movement to mills or to other purchasers and the process of assembling the same and of selecting such even-running lots therefrom is commonly designated as "concentration" and the merchants performing this service are called concentrators and are so referred to in the record in these proceedings and in the decisions of the Commission.

Cotton moves by railroad on what are known as "any quantity" rates, that is, to say, the rate applies in cents per 100 pounds irrespective of quantities shipped and there are no car-load rates generally speaking. Rates are referred to in cents per 100 pounds unless otherwise specified. The uncompressed bales originate at various interior railroad stations and are shipped in that form except that where they originate at points where compresses are located they are usually compressed before being shipped by railroad. Compresses are located at various interior points, most of them being standard-density compresses. Because of the bulky nature of uncompressed cotton, the practice grew up on the part of the railroads to absorb the cost of compression to standard density at various interior compress points in order to conserve car space for shipping [fol. 13-a] the commodity, but where the cotton moves only short distances the railroads will not absorb all of the compression charge and in no case do they absorb any part un-

less the freight rate is in excess of 56 cents per 100 pounds.

At all compresses there are warehouse facilities which are available to the cotton merchants for the concentration and grading of cotton for reshipment. As the greater part of the cotton originates at country railroad stations which are non-compress points it is moved by the railroads into the compress points, stopped for compression and reshipped to the ports. Upon the theory that the cotton was being stopped at the compress any way, the railroads made no charge for according the shipper a transit privilege at the compress point and the merchant may concentrate his cotton and reship it to the port on the balance of the through rate without any extra charge by the carrier. This practice spread until the tariffs generally provide that all cotton may have one free transit privilege from the carriers for concentration whether the same be at the compress point or not. If, however, a second privilege is taken a charge of 3½ cents per 100 pounds is made. This is called the "second concentration charge."

There are numerous cotton warehouses and compresses also located at the various ports at which warehouses, similar merchandising or concentration service is performed for the owner or cotton merchant so that cotton originating at an interior point may be concentrated by the merchant at an interior warehouse, either at a point where the cotton is compressed in transit by the railroad or at another point in the line of movement or the cotton may be moved to the port and concentrated in a warehouse at the port where similar services are performed. In the first case, the merchants are called "interior concentrators" [fol. 14] and in the second case, they are called "port concentrators." Frequently, cotton which has been first concentrated in the interior will, for various reasons, be again concentrated at the port and this is called "second concentration" as above referred to.

Cotton moves to ports in two classes of traffic, one for local delivery at depots or warehouses where the owner takes delivery and merchandises or concentrates his cotton at such point as the destination, and the other for export movement. Cotton moving for export may move under so-called through export bills of lading under forms and conditions prescribed by the Interstate Commerce Commission

in its decision in I. C. C. Docket 4844 reported at 64 I. C. C. Reports, pages 347 ff, or it may move upon what is known as "for export" bill of lading, which bill of lading would apply on cotton which has already been concentrated and merchandised and is ready for export movement and is so intended, but upon which no bills of lading have been obtained beyond the port. The local rates to the ports are commonly referred to as "domestic rates" and the bills of lading covering same are domestic bills of lading; whereas, in other cases, export bills of lading are used, all such bills of lading being in form and with conditions and privileges as prescribed in the orders and decisions of the Commission in its Docket No. 4844, 64 I. C. C. 347, and also 52 I. C. C. 671.

Cotton moving to the port on domestic bills of lading is charged what is known as the domestic or local rate and certain services are required of the carriers in delivering such cotton and the shippers required to unload the same at once upon its arrival and release the cars in which it is loaded within 48 hours or incur heavy demurrage penalties. Cotton moving on export bills of lading imposes upon the carrier a duty to deliver such cotton in berths at ship's [fol. 14-a] tackle upon the various wharves and docks at the ports according as the shipper may determine and to pay the wharfage charges, as well as the cost of unloading such cotton and placing it at proper places in the steamer's berth, where it will be received by the steamer. It also involves additional transportation services of various kinds, among which there is accorded to the shipper the privilege of utilizing the cars for storage for a limited time and of liberal free time allowances together with demurrage rates which are substantially lower than those applying on local traffic and are not in the character of penalties where cotton is not unloaded within the time allowance. The undisputed testimony before the Commission shows that additional transportation services and transportation services of a different character are rendered to shipments of export cotton which are in addition to those rendered shipments of domestic or local-delivery cotton. The carriers have heretofore made a higher charge for export shipments of cotton than for local delivery of cotton. This charge is generally 5 cents per 100 pounds, which 5 cents embraces the

wharfage charge which is paid out by the railroad and amounts to 2 cents per 100 pounds at Galveston and Houston, Texas.

On shipments of cotton originating at points in Texas and moving to Houston and Galveston the difference between the local delivery rate and the export shipside rate (exclusive of wharfage) is 3½ cents per 100 pounds, but in the case of shipments moving from the other states involved in the investigation this difference is 3 cents per 100 pounds. For a number of years, interior concentrators have made shipments of cotton on the export rates and have enjoyed the additional services and privileges applicable under such rates and bills of lading covering such movements.

[fol. 15] Merchants using local warehouses at Houston, Galveston and other ports have paid the local depot delivery rates and have taken possession of such cotton and placed it in their stocks in such warehouses where they perform merchandising services upon the same similar to those performed at the interior concentration point by the interior concentrator. In the event the cotton is received in such warehouses at Houston, Galveston and other Ports is later to be exported from that point, the owner of the cotton will have the same transported to the wharves and docks and placed upon the berths in reach of ship's tackle where the steamship agent will receive the same and issue an ocean bill of lading therefor. This is the common and general practice of handling cotton at Houston, Galveston and New Orelans, which has previously moved from the originating territory involved in this investigation. Such movement is commonly and frequently made by dray or truck lines in which event the railroads have nothing to do with it as their transportation services were completed when the cotton was delivered at the local warehouse. In other cases the cotton is loaded upon railroad cars at such warehouses and switched to the wharves where it is unloaded and placed in the steamer's berth on the wharf and in this event the owner of the cotton pays the railroad its regular published rate for switching such cotton from the warehouse to the wharf and makes his own arrangements to have the same unloaded and placed in the steamer's berth at the wharf. This movement is independent of the previous rail-

road movement and the cost thereof is borne by the shipper using the warehouse in question.

The railroads publish tariffs which accord to shippers transit privileges on cotton at interior and port points. These transit privileges apply on cotton moving to shipside for export and are commonly used by interior concen- [fol. 15a] trators but port concentrators do not use the same for the reason that in order to use the transit privileges on the out-bound movement from the warehouse to the ship's berth the export shipside rate must be applied which is 3 cents (or 3½ cents) higher than the local delivery rate and the port concentrator is able to move his cotton from the port warehouse to the ship's berth and place in such berth at approximately this additional cost. It is more economical for him to handle it in this manner for the reason that he would have to take out another bill of lading with the railroad for the movement to shipside and would have to pay the additional charges to the railroad and later file what is known as a transit claim and obtain a refund of money; whereas, by standing the cost direct, he obviates the additional accounting and expense incident to the filing and handling of such transit claims.

Under the practice above described, it is shown that the user of each warehouse at the port pays whatever the cost might be to move the cotton from such warehouse to the steamer's berth and that such cost will vary according to the location or availability of the warehouse with respect to the steamer berths. At Galveston warehouses are located at varying distances from the waterfront and wharves ranging from 100 yards to a mile and a half according to the testimony in the case before the Commission and dray lines were and are commonly employed for the transportation of such cotton to steamer berths. At Houston prior to 1921 warehouses were located at varying distances back from the waterfront and utilized dray lines or barge lines for delivery of cotton in some cases and railroad switching services in other cases—the more distant warehouses usually employing switching services.

In 1921 to 1923 each of your petitioners, Alexander, Sprunt & Son, Inc., Anderson, Clayton & Co. and Weather- [fol. 16] ford, Crump & Co acquired through stock-ownership and caused to be constructed or acquired warehouses

for the merchandising of cotton which were located nearer to and more convenient wharf facilities than other warehouses at Houston and Galveston—such warehouses being owned respectively by petitioners, Ship Channel Compress Company, Houston Compress Company and Turning Basin Compress Company, corporations. The first two compress companies mentioned also maintain public wharves and docks at the port of Houston which are adjacent to or near the warehouses owned by such companies, and the third Compress Company has its plant located near to or adjacent to wharves and docks owned by the city of Houston, all of such wharves and docks being used as public facilities for the movement of cotton and various other commodities. When cotton is merchandised in such warehouses and is destined to move out through a steamship which has been assigned to a berth at the near-by wharves, it is necessary for the cotton to be moved out of the warehouse, which is entirely separate and distinct from the wharves and berths of steamers, and transported to a point or location in the berth which has been assigned to the steamer in question and at such point in that berth which may be designated by the agent of the steamer, who directs that the cotton be so stored on the berth as to serve his convenience in loading the ships. At Houston Compress Company—this service is performed by means of a system of electric trolley lines which transport the cotton out of the warehouse; thence to the wharf and thence to the particular berth upon the wharf; at the other compress points motor-drawn trucks or hand-trucks are utilized for movement from warehouses and to the wharves and similar service is performed in placing the same upon the particular berth in accordance with the directions of the agent of the steamer.

[fol. 16a] Your petitioners above named expended very large sums of money in order to obtain locations and to construct such facilities in such manner as would more conveniently serve the wharves and docks and so as to make more convenient and economical the handling of cotton out of warehouses to ship's berths.

Prior to the time when these facilities were completed complaint was made by merchants at Galveston owning or using warehouses located remote from the waterfront, to the effect that the users of such warehouses being con-

structed near the waterfront by obtaining the advantage of the local delivery rate which was lower than the shipside rate obtained an undue preference and advantage and that this discriminated against the users of uptown and interior warehouses, as a result of which the Commission set down for investigation the question as to whether or not the application of domestic or local delivery rates on shipments of cotton delivered to warehouses near the waterfront which were lower than corresponding export rates constituted illegal practices or involved undue preference or undue prejudice and all of which is set forth in the copy of such order described in paragraph VII of this complaint. All of the foregoing was shown by undisputed evidence adduced in the proceeding before the Commission in said case.

XI

The Commission found that where the carriers performed a transit for shippers of cotton at the same points where the carriers would stop such cotton for compression in transit for the benefit of such carriers, the services re- [fol. 17] quired of the carriers were materially less than where such transit privilege was accorded at some other point than where the carriers stop the shipments for compression, as is evidenced by the following excerpt from the decision of the Commission, as set forth in Exhibit "B," to-wit:

"The services of the carrier in handling cotton for compression are substantially the same as for concentration in so far as the movement into and out of the concentration or compress points is concerned, but when the cotton is compressed the compress companies are required to unload and load the cars. When cotton is concentrated at the point where the carrier compresses it, the service rendered by the carrier is materially less than where concentration and compression take place at different points. If the cotton is not concentrated at the compress point, the compression is usually promptly effected and the carload shipments forwarded to the concentration or destination point. If it is concentrated at the compress point, the charges for concentration or merchandising are borne by the shipper

and the charge for compression by the carrier. In many instances some of the services of concentration or merchandising for the shipper are performed by the compress company during the time the compression is being effected."

Notwithstanding the foregoing finding the Commission nevertheless excluded such consideration from that portion of its decision which relates to the relative adjustment of rates at the ports and in effect orders a continuance of the performing of transit services without charge, not only at the points where the cotton is compressed in transit by the carrier, but at other points in the interior and at the ports, and at the same time the Commission denies to your petitioners the benefit of any transit privileges at their facilities on shipments which are later moved to steamers' berths, and thereby creates an undue preference, not only for the concentrators using transit privileges upon the [fol. 17-a] railroads at points where the railroads compress the cotton, but at other interior points and other port points, and there is no competent evidence upon which to base such a finding and order, and the Commission in excluding consideration of such differences in costs and services, when dealing with that portion of the investigation which relates to the adjustment of the rates to various concentrators using port facilities and interior facilities other than those located at the compress points, has denied to your petitioners a full hearing and consideration and has issued an order which will deprive your petitioners of their property without just compensation.

XII

The carriers, who were defendants or respondents in the proceedings before the Commission denied having violated any provisions of the Interstate Commerce Act and presented testimony which showed that the export shipments of cotton involved additional and different services from those being rendered to the local shipments of cotton and denied generally that there were any illegal practices or failure to observe tariff provisions which embodied practices substantially along the lines hereinabove set forth.

XIII

It was charged in such proceedings that it was illegal for the carriers to charge the local delivery rates on shipments of cotton moving to the warehouses owned by the petitioners hereinabove mentioned and it was contended that [fol. 18] the export rates should apply, but upon this the undisputed evidence showed that where cotton moved into such warehouses, it was placed in stock and the shipments lost their identity and might thereafter be moved out by rail to other destinations, kept in storage at the same destination or moved out by water in interstate or foreign commerce and that the owner obtained complete possession of such property and that there was a complete break in the transportation at such warehouse just as there is at other warehouses where goods are merchandised and merchants stocks are maintained and the Commission correctly found that it was not illegal to apply the local delivery rates to such shipments.

XIV

The Commission found and ordered in substance that the maintenance of the export rates which were 3 cents (exclusive of wharfage) higher than local delivery rates gave to the warehouses and shippers using the warehouses owned by the petitioners above mentioned, an unnatural and unlawful preference and subjected the uptown and interior warehouses and shippers using such warehouses to an unnatural and unlawful disadvantage to and undue prejudice which conclusion is unwarranted by the evidence and is not supported by substantial evidence but is based upon the assumption that the warehouses in question are upon the waterfront and upon findings to the effect that the same are at the waterfront and that cotton placed in such warehouses is at shipside; whereas, the undisputed testimony shows that such warehouses are not upon the waterfront and that cotton located in such warehouses is [fol. 18-a] not at shipside and that the only advantage to be derived by such warehouses would come from their natural geographic location of which the Commission has no lawful authority or jurisdiction to deprive them.

XV

The Commission further ordered that the warehouses of your petitioners and the persons using the same including your petitioners should not be permitted to enjoy any benefits from their location near the waterfront, but that all advantages of such location should be taken away from them and that equalization should be made between them and the users of warehouses located remote from the waterfront and the users of warehouses located at interior points, for the purpose of compelling the carriers to bring about an equalization of commercial advantages and commercial conditions which is beyond the jurisdiction and power of the Interstate Commerce Commission and constitutes arbitrary and unwarranted action to the detriment and damage of your petitioners.

XVI

The Commission found, concluded and so ordered that the rates charged by the carriers for export shipments including the additional and different transportation services involved in such shipments should be equalized with and made no higher than the rates for local shipments which did not involve such additional services and the action [fol. 19] of the Commission in so finding and ordering is not supported by substantial evidence, but is in conflict with the undisputed evidence that additional and different services are required for the export movement and constitutes an arbitrary exercise of the regulatory power and is beyond the jurisdiction and power of the Commission to order same, all of which is to the great damage of your petitioners as will be more specifically hereinafter shown.

XVII

The Commission further found, concluded and ordered that the rates heretofore applied to the warehouses of your petitioners and charged to users of such warehouses, including your petitioners should be increased one cent per 100 pounds, which increase is wholly without warrant by the issues in the proceedings or by the evidence adduced therein. First, because the Commission specifically found

and held that the reasonableness of the rates was not in issue. Second, because no evidence was submitted to show that the existing rates were unreasonably low, or that any increase should be made therein. Third, because the Commission had already fixed such rates as maximum reasonable rates and held and ordered that any higher rates would be unreasonable and in violation of the law. Fourth, because the defendant carriers did not nor did any other interests, make any contention in said case to the effect that the existing local rates were unreasonably low or that the increases in such rates would be reasonable and lawful. Fifth, because the law required that in any proposed increase of such rates the burden of proof of reasonableness [fol. 19-a] should be upon the carriers and no such burden of proof was assumed by the carriers. Sixth, because the Commission has no authority in law to increase rates unless the reasonableness of such rates has been considered. Seventh, because your petitioners relied upon such rates as being reasonable rates under the orders of the Interstate Commerce Commission and as established by it and were not permitted or given an opportunity to offer evidence to meet any issue as to the increase of such rates.

XVIII

The Commission ordered a general increase in all local rates applicable to Houston, Galveston, New Orleans and other ports involved and your petitioners make shipments of cotton to all of such ports and such order increasing such rates is arbitrary, not based upon substantial evidence and not warranted by the issues is unlawful and void for the reasons and upon the grounds set forth in the next preceding paragraph hereof, which are hereby referred to and made a part hereof as though fully set forth herein.

XIX

The findings, conclusions and orders of the Commission place the warehouses owned by your petitioners as aforesaid and the shippers or users of such warehouses, including your petitioners at a net penalty or disadvantage in competition with other warehouses and deprive them of their property without due process in that the Commission

has ordered the carriers to transport cotton at certain rates and to include, without charge, transit privileges upon such [fol. 20] shipments of cotton where such cotton is concentrated at interior warehouses or at port warehouses other than the warehouses of your petitioners, which other port warehouses are remotely distant from the wharves and berths of steamers, and has ordered the said carriers to include without additional change the additional services in the placing of the cotton upon wharves and in the berths of steamers in delivering the same to ships within such berths in accordance with the requirements of the steamship lines; whereas, the carriers are prohibited from according similar privileges to the warehouses of your petitioners and the users of the same including your petitioners where such cotton is later moved to wharves nearby to such warehouses and while the Commission authorizes and directs the carriers to absorb the cost to such other warehouses and shippers of moving such cotton from the warehouses to the berths it prohibits the carriers from making similar absorptions to your petitioners on cotton moving to nearby wharves, which has the effect of requiring your petitioners to pay the full amount of the rate which their competitors pay for all such privileges and in addition thereto pay the expense of moving the cotton out of warehouses belonging to your petitioners (and other warehouses that may be similarly located) and placing such shipments upon the wharves in the ships' berths. The undisputed evidence in this case shows that this is a substantial additional cost and that this disadvantage will be imposed upon the plants that ordinarily would appear to be located so as to have a natural economical advantage, but the Commission orders and assures the users of other warehouses the benefit of a transit privilege and prohibits to the users of these warehouses near the waterfront any benefit of transit privilege or any allowance or absorptions similar in character to those being provided for their competitors. To illustrate [fol. 20-a] the above, reference is made to the merchants using the warehouses located at Galveston more than a mile back of the waterfront in competition with the petitioners who may be using the warehouse of Houston Compress Company. The Galveston merchant would pay 90 cents per 100 pounds for a shipment of cotton moving from

Little Rock, Ark., at the present time and the Houston merchant would pay the same, and in both cases the shipments would be received at the respective warehouses and the owner thereof would pay the cost of moving the same from such warehouse to whatever steamer's berth might later take the cotton. If the cost of moving the cotton from one warehouse to its place on the wharf is less than the cost to the other the difference is due to the natural advantage of location and to the fact that the Galveston merchant uses a warehouse more than a mile away from the waterfront whereas your petitioner uses a warehouse from which the cotton may be moved by trolley service distances ranging from 300 feet 3000 feet to a place on the near-by wharves, but in both cases the carrier gets 90 cents per 100 pounds for the movement of cotton from Little Rock to Houston or Galveston. Under the decision and order of the Commission both shippers would pay an increased rate of 1 cent per 100 pounds which would be 91 cents, but the merchant using the remote warehouse at Galveston would claim back from the railroad the cost to him for his expenses in moving the cotton by dray or other conveyance from his warehouse to the place on the wharf and in the berth where the ship would take the cotton; whereas, your petitioner not only is denied any such allowance but has to pay the increased rate and such additional sums as may be necessary to place the cotton in the berth upon the nearby wharf. The testimony in this case shows that the dray lines go into the warehouses at Galveston and [fol. 21] pick up the cotton in the warehouses, transporting it from such warehouses and place it in the steamer's berth within reach of ship's tackle, which movement is similar and analogous to the movement by electric trolley or other means of transportation from your petitioners' warehouses to steamers' berths at the near-by wharves and in the case of your petitioners the railroad would collect a net 91 cents per 100 pounds for the transportation; whereas, in the other case, it would pay back out of the 91 cents allowances which under the record in this case are shown to be as much as 4 cents per 100 pounds, all of which very effectively and effectually will deprive your petitioners of their property without due process and will penalize them in the handling of such shipments of cotton through

the warehouses which have been thus located by them at great expenses, under conditions where they would expect to obtain the advantage of location near the waterfront, and the Commission by such order exceeds its power and authority under the law, first, in that it undertakes to penalize one class of shippers for their foresight in undertaking to provide economical and well-located facilities and gives an advantage to their competitors who have less advantageously located facilities, all of which is beyond the power and jurisdiction of the Interstate Commerce Commission. Second, it deprives your petitioners of their property without due process in that the order is not supported or warranted by any substantial evidence in the cause and is therefore arbitrary and unlawful. Third, that the order is unlawful and void because the same is arbitrary and confiscates the property of your petitioners without compensation in violation of the 5th Amendment to the Constitution of the United States. Fourth, because it deprives your petitioners of their property without due process and is therefore unconstitutional and void in violation of the 14th Amendment to the Constitution of the United States.

[fol. 21-a]

XX

The order of the Commission is arbitrary, unlawful and void in that it undertakes to compel the carriers to handle export cotton traffic to Houston and the other ports at no higher rates than are maintained for handling local shipments of cotton to petitioners and other merchants located at such ports, although the export shipments and the tariffs applicable thereto embody additional and substantial services which are not involved in the handling of the local cotton shipments, and in that the order in requiring the same rates with such additional services for the competitors of your petitioners, while such additional services are not performed nor available for your petitioners, undertakes without lawful authority to equalize commercial conditions and to give preference to competitors of your petitioners to the damage of your petitioners.

XXI

That your petitioner, Texas Farm Bureau Cotton Association, exists, among other things, for the purpose of as-

suring to the producers of cotton the most economical and advantageous means and cost of distribution and transportation of cotton and respectively represents that the undisputed evidence in this case shows that any increase in the local rates to the ports will result in additional cost to the farmer or producer and respectively represents that there is no evidence in this case and no issues submitted under which the Commission can lawfully and properly authorize the carriers to increase the rate upon local shipments of cotton to the ports and that such increase in the rates will be paid or borne in whole or in part by the farm-
[fol. 22] ers including the members of this petitioner, and will be to their great detriment and damage.

XXII

The undisputed evidence before the Commission shows that the warehouses owned by petitioner, Turning Basin Compress Company, controlled through stock ownership by petitioner, Weatherford, Crump & Company, was not only not situated at the waterfront a- Houston, but that the said company did not own, control or operate any wharves and docks either public or private, but that the wharves and docks nearest to the warehouses were municipally owned and controlled facilities, and the said petitioners moved cotton and others using the said warehouse moved cotton out from said warehouse to various wharves and docks and to various other points both at Houston and elsewhere and that where such cotton moved to the nearest wharves it was necessary to employ some means of conveyance to take the cotton at varying and substantial distances from such warehouses to the particular location upon the wharves which were designated by the agents of the steamship lines as the points at which cotton should be received, all of which was at a substantial cost to petitioners and other persons utilizing such warehouses and it was also shown in said petition before the Commission that in the case of the Ship Channel Compress Company controlled by stock ownership by Alexander Sprunt & Son, Inc., petitioner, and in the case of Houston Compress Company, petitioner, controlled by stock ownership by Anderson, Clayton & Company, petitioners, that the wharves and docks were

operated separately and distinct from the warehouses belonging to such corporations and were in fact separate [fol. 22-a] facilities, the wharves and docks being general facilities for the use of every person making shipments of cotton and other commodities over such wharves via facilities that are berthed therein, and that the space upon such wharves is assigned to and controlled by the steamship companies operating steamships at such wharves and further that where the cotton in the warehouses of the respective petitioners is to be moved to the nearby wharves such cotton has to be moved via such means of conveyance as may be supplied, which movement may be by switching service from warehouses belonging to Houston Compress Company or by overhead electric trolley service or other devices and by hand-truck or tractor and trailer devices at the Ship Channel Compress Company after being removed from such warehouse must be placed in accordance with the directions of the agents of the steamship lines in the particular berth and in the particular place in such berth which the steamship line may designate, all of which constitutes a substantial cost and expense for transportation services which are similar in character to the services performed in moving shipments to such wharves from other warehouses located at Houston and to services performed in moving shipments of cotton from warehouses at Galveston to wharves located in that port and the action of the Commission in arbitrary and void in that it undertakes to authorize or require the carriers to absorb the costs or to make allowances for the costs of such services on cotton moving from other warehouses to such wharves while prohibiting such allowances on cotton moving from the warehouses of your petitioners to the same wharves.

[fol. 23] XXIII

The aforesaid order of the Commission is null and void and constitutes a taking of the property of petitioners and each of them without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the reason, among others, that it increases the rate on cotton being handled by your petitioners without giving them an opportunity to be heard as to the lawfulness and reasonableness of such increased rates.

XXIV

The aforesaid order of the Commission is null and void and constitutes a taking of the property of your petitioners (other than petitioner, Texas Farm Bureau Cotton Association) without due process of law and without authority for the reason, among others, that it deprives your petitioners of the benefit of the location of their warehouses and facilities constructed for the purpose of handling such shipments and imposes penalties upon the same, while at the same time ordering preferential services to be performed for competitors of said petitioners who own or utilize facilities located elsewhere and will thereby seriously impair the ability of petitioners to engage in said commerce and will impair the value of petitioners' facilities.

XXV

The aforesaid order of the Commission is null and void for the reason, among others, that the Commission has no [fol. 23-a] jurisdiction or power under the law to require or to authorize common carriers, respondents in said cause, to deprive your petitioners (other than the Texas Farm Bureau Cotton Association) of the benefits of their geographic location and of the right to enjoy the natural advantages of the location of their facilities for handling said shipments of cotton.

XXVI

The aforesaid order of the Commission is null and void and without authority of law for the reason, among others, that the Commission undertakes in its order to regulate competition among warehouses and compresses at Houston and Galveston and other ports engaged in the storage, compression and handling of cotton for shippers, and whereas, the law confers no jurisdiction upon the Commission to make such regulation.

XXVII

The aforesaid order of the Commission is null and void for the reason, among others, that there is no competent evidence before the Commission to show that the existing rates

on cotton being charged your petitioners are unjust or unreasonable or to show that such existing rates should be increased, and for the further reason that the Commission adjudged and held that no issue as to the measure or reasonableness of the existing rates was involved in the said proceeding in which its order was issued.

[fol. 24] XXVIII

The aforesaid order of the Commission is null and void for the reason, among others, that there is no competent evievidence to support the finding and order of the Commission to the effect that the rates charged by the carriers for the transportation of export cotton traffic and for the services involved in connection with such transportation (exclusive of the charges for wharfage) and as a part thereof and unlawful and discriminatory to the extent that the same may exceed the contemporaneous rates charged for the transportation of local shipments of cotton to the same destinations including the services that are incidental to such transportation.

XXIX

The aforesaid order of the Commission is null and void for the reason that there is no competent evidence upon which to support its finding that the application of the same rates for the transportation of cotton to the warehouses of your petitioners as are charged to up-town or other warehouses at Houston and Galveston constitutes any unlawful practice and for the further reason that there is no evidence to show any damages to the users of such other warehouses by reason of the rates charged.

XXX

The aforesaid order of the Commission is null and void for the reason, among others, that there is no competent evidence to support the finding of the Commission to the [fol. 24-a] effect that the adjustment of rates on cotton moving to warehouses and facilities used by your petitioners and on cotton moving to other warehouses and facilities located at Houston, Galveston and other Ports, is unjustly prejudicial against such other warehouses and the persons

using the same and unduly preferential of your petitioners or that the other warehouses which are referred to as "uptown" warehouses and the persons using the same are in any manner damaged by reason of the adjustment of rates applicable to cotton moving to such warehouses and to cotton moving to the warehouses of your petitioners.

XXXI

The aforesaid order of the Commission is void for uncertainty in that the same does not indicate what provisions of the law are violated or what particular acts constitute violations thereof and in that the Commission in such decision and order finds and assumes the export traffic and the services performed in the movement of export cotton traffic is a like kind of traffic and a like and contemporaneous service with local delivery traffic which is not for export and which does not receive like services, but constitutes a different kind of traffic, a different character of service and therefore cannot be in violation of those provisions of the law relating to discriminations as between various persons as defined in Section Two of the Interstate Commerce Act, nor does the decision point out in what manner Section Two or any other prohibition of such Act is violated by the carriers or in what manner any undue or unreasonable preference or advantage is enjoyed by your petitioners or other persons or what undue or unreasonable prejudice or disadvantage or unjust discrimination is imposed upon other persons.

[fol. 25]

XXXII

The orders of investigation issued by the Commission in this cause brought in issue rates, fares, charges and regulations which have been imposed by the authority of the State of Texas at Houston, Galveton and other points and by authority of the State of Louisiana at New Orleans, and your petitioners allege that the Commission did not have any jurisdiction or authority to dispose of any such issues or make any orders which would affect the rates, regulations and charges imposed by the authority of such states for the reason that the Commission, so petitioners are informed and believe, did not cause the State of Texas and

the State of Louisiana to be notified of the proceeding as required under the provisions of Paragraph Three of Section 13 of the Interstate Commerce Act and such order is therefore unlawful and void.

XXXIII

Your petitioners allege that the order of the Commission is null and void in that the same is in violation of that provision of the Transportation Act of 1920 known as Section 500, by which it was declared to be the policy of the Congress to promote, encourage and develop water transportation, service and facilities in connection with the commerce of the United States, for the reason that the said order of the Commission would impair and hinder the development of the facilities for the handling of commerce at the Port of Houston and at other ports by penalizing the location of the facilities adjacent to the water front and would be in violation of the law and, therefore, void.

[fol. 25-a] XXXIV

If the aforesaid order of the Commission is not enjoined and set aside, petitioners and each of them will be seriously injured and impaired in their ability to transact their business of buying, selling and shipping cotton in competition with other persons engaged in such business and the value and use of their facilities for the handling of such cotton will be seriously impaired, if not destroyed, and your petitioners will suffer great and irreparable damage and injury not only in the payment of additional freight or transportation charges under said order amounting to many thousands of dollars per year, but in the damage to them by reason of the impairment of their ability to transact their business is a profitable manner and to enjoy and use the facilities which they have created at great cost and expense for such purpose and they will have no adequate remedy at law to recover all or any part of such damage.

XXXV

That the carriers, respondents in said proceeding, are commanded by the said order to establish and place in effect such rates, fares, charges, and practices as are embodied

in said order not later than July 16, 1927, and unless said order be enjoined and set aside, the said carriers will carry out and enforce the same to the irreparable damage and injury of your petitioners as aforesaid.

Wherefore, premises considered, inasmuch as your petitioners are remediless in the premises, and by the strict rules of common law, and if the enforcement of the said order of the Commission of April 4, 1927, and its said order of June 23, 1925, as made a part thereof, is not stayed and enjoined, will suffer irreparable damage, and to the end [fol. 26] that they may obtain the relief to which they are entitled, petitioners do respectfully pray:

First. A permanent injunction decreeing that the said order be set aside, annulled and suspended, and its enforcement, operation and execution be forever enjoined.

Second. An interlocutory injunction suspending the enforcement, operation and execution of said order, in whole or in part, and setting aside the same.

Third. A temporary stay or suspension of the operation of said order for not more than sixty days pending the application for other orders herein prayed for.

Fourth. Such other and further relief as may be proper in the premises.

To the end that the above relief may be obtained, your petitioners respectfully request that your Honors direct that a Writ of Subpoena be directed to defendant and that service be had in the manner provided by law, commanding it on a day certain to appear and answer this Bill of Complaint, but not under oath, and to grant unto your petitioners such hearing or hearings as shall be meet and proper in order to enable the court to grant the relief prayed for, and to command the defendant to abide by and perform such order or orders or decrees as to the court may seem proper and required by the principles of equity and good conscience.

Fulbright, Crooker & Freeman, R. C. Fulbright, R. L. Botts, C. K. Bullard, Solicitors for Plaintiffs.

[fol. 26a] *Duly sworn to by W. L. Clayton. Jurat omitted in printing.*

7/2/27.

Ordered that rule issue to Defendant to Appear before the legally constituted court at New Orleans, La., consisting of 3 Judges, on Tuesday, July 12th, at 10:30 A. M. to show cause why the restraining order and or the temporary injunction prayed for should not issue.

J. C. Hutcheson, Jr., Judge.

[fol. 27] EXHIBIT A TO BILL OF COMPLAINT

Appendix

Respondents in I. C. C. Dockets 14940, 13991 & 11965

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY; Louisiana & Pine Bluff Railway Company; Mansfield Railway & Transportation Company; The Nacogdoches & Southeastern Railroad Company; Mobile & Ohio Railroad Company; New Orleans & Northeastern Railroad Company; Southern Railway Company; Cisco & Northeastern Railway; Louisiana & Arkansas Railway Company; Louisville & Nashville Railroad Company; Ouachita & Northeastern Railroad Company; Aransas Harbor Terminal Railway Company; Arkansas and Louisiana Missouri Railway Company; Arkansas Railroad; Bartlett-Western Railway Company; Cache Valley Railroad Company; Combs, Cass & Eastern Railroad Company; Dayton-Goose Creek Railway Company; DeQueen & Eastern Railroad Company; Doniphan, Kensett & Searcy Railway; East Texas & Gulf Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fourche River Valley & Indian Territory Railway Company; Garyville Northern Railroad Company; Glenmore & Western Railroad Company; Groveton, Lufkin & Northern Railway Company; The Gulf & Sabine River Railroad Company; Gulf, Texas & Western Railway Company, and W. Frank Knox, Receiver; Jefferson & Northwestern Railway Company; Lufkin, Hemphill & Gulf Railway Company; The Motley County Railway Company; Natchez, Urania & Ruston Railway Company;

New Orleans, Natalbany & Natchez Railway Company; [fol. 27a] North Louisiana & Gulf Railroad Company; Okmulgee, Northern Railway Company; Paris & Mount Pleasant Railroad Company, and R. W. Wortham, Receiver; Red River & Gulf Railroad Company; Sugar Land Railway Company; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Trinity Valley Southern Railroad Company; Wichita Falls & Southern Railroad Company; Missouri Pacific Railroad Company; Eastland, Wichita Falls & Gulf Railroad Company; Miami Mineral Belt Railroad Company; Oilfields Short Line Railroad Company; San Antonio, Uvalde & Gulf Railroad, and A. R. Ponder, Receiver; Warren & Saline River Railroad Company; Alexandria & Western Railway Company; Neame, Carson & Southern Railroad Company; Pecos Valley Southern Railway Company; San Antonio & Aransas Pass Railway Company; Angelina & Neches River Rail road Company; Central Railway Company of Arkansas; Clinton & Oklahoma Western Railway Company; Louisiana Railway and Navigation Company; Missouri & North Arkansas Railroad Company; Oklahoma, New Mexico & Pacific Railway Company; Wichita Falls, Ranger & Fort Worth Railroad Company, and J. W. Mitchell and Frank L. Ketch, Receivers; The Beaumont, Sour Lake & Western Railway Company; The Denison & Pacific Suburban Railway Company; Houston & Brazos Valley Railway Company, and George C. Morris, Receiver; International & Great Northern Railway Company; Louisiana Southern Railway Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railway Company; The Orange & Northwestern Railroad Company; The St. Louis, Brownsville & Mexico Railway Company; San Benito & Rio Grande Valley Railway Company; The Texas & Pacific Railway Company, and J. L. Lancaster [fol. 28] and C. L. Wallace, Receivers; Abilene & Southern Railway Company; The Brimstone Railroad & Canal Company; Midland Valley Railroad Company; Blytheville, Leachville & Arkansas Southern Railroad Company; The Fort Worth & Denver City Railway Company; The Trinity & Brazos Valley Railway Company, and J. A. Hulen, Receiver; The Wichita Valley Railway Com-

pany; Gulf, Mobile & Northern Railroad Company; Mississippi Central Railroad Company; New Orleans Great Northern Rairoad Company; St. Louis Southwestern Railway Company of Texas; The Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; Illinois Central Railroad Company; Missouri, Kansas & Texas Railway Company, and B. F. Babbitt, Receiver; The Missouri, Kansas & Texas Railway Company of Texas, and Charles E. Schaff, Receiver; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Panhandle & Santa Fe Railway Company; The Yazoo & Mississippi Valley Railroad Company; El Paso & Northeastern Railroad Company; El Paso & Southwestern Company; El Paso & Southwestern Railroad Company of Texas; The Galveston, Harrisburg & San Antonio Railway Company; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East & West Texas Railway Company; Iberia & Vermillion Railroad Company; Lake Charles & Northern Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Southern Pacific Company; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Arkansas Western Railway Company; Brownwood North & South Railway Company; The Chicago, Rock [fol. 28a] Island & Gulf Railway Company; The Chicago, Rock Island & Pacific Railway Company; Fort Worth & Rio Grande Railway Company; The Kansas City Southern Railway Company; Paris & Great Northern Railroad Company; The Poteau Valley Railroad Company; Quanah, Acme & Pacific Railway Company; St. Louis-San Francisco Railway Company; St. Louis, San Francisco & Texas Railway Company; Texarkana & Fort Smith Railway Company; Asherton & Gulf Railway Company; Beaver Meade & Englewood Railway Company; Caddo & Choctaw Railroad Company; Christic & Eastern Railway Company; Dardanelle & Russelville Railroad Company; El Dorado & Wesson Railway Company; Fordyce & Princeton Railroad Company; Fort Smith & Western Railroad Company; The Franklin & Abbeville Railway Company; Fredericksburg & Northern

Railway Company; Freeo Valley Railroad Company; Gulf & Northern Railway Company; Jonesboro, Lake City & Eastern Railroad Company; Kansas City, Mexico & Orient Railroad Company, and Wm. T. Kemper, Receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas, Oklahoma & Gulf Railway Company; Kansas, Oklahoma & Gulf Railway Company of Texas; Kinder & Northwestern Railroad Company; Louisiana & Northwest Railroad Company; Louisiana & Pacific Railway Company; Monroe & Texas Railroad Company; Moscow, Camden & San Augustine Railway Company; Oakdale & Gulf Railway Company, Prescott & Northwestern Railroad Company; Rio Grande & Eagle Pass Railway Company; Roscoe, Snyder & Pacific Railway Company; San Antonio Southern Railway Company; Shreveport, Houston & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; Texas City Terminal Railway Company; The Texas-[fol. 29] Mexican Railway Company; Texas Midland Railroad; Texas Southeastern Railroad Company; Trinity Valley & Northern Railway Company; Warren & Ouachita Valley Railway Company; Woodworth & Louisiana Central Railway Company; Black Bayou Railroad Company, and W. H. Welch & F. Cowherd, Receivers; Blytheville, Burdette & Mississippi River Railway Company; Caro Northern Railway Company; Eastern Texas Railroad Company; Kentwood & Eastern Railway Company; Loranger, Louisiana & Northeastern Railroad Company; Midland & Northwestern Railway Company; Port Bolivar Iron Ore Railway Company; Rio Grande, El Paso & Santa Fe Railroad Company; Roby & Northern Railroad Company; St. Louis, El Reno & Western Railway Company, and K. E. Humphrey, Receiver; The Timpson & Henderson Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Zwolle & Eastern Railway Company; Augusta Railroad Company; Butler County Railroad Company; Beaumont & Saratoga Transportation Company; Brownsville & Matamoras Bridge Company; Bauxite & Northern Railway Company; Beaumont Wharf & Terminal Company; Cairo, Truman & Southern Railroad Company; Dallas, Cleburne & Southwestern

Railway Company, and Wm. G. Breg, Receiver; Dallas Terminal Railway & Union Depot Company; The Denison, Bonham & New Orleans Railroad Company, and Wm. G. Breg, Receiver; El Paso Southern Railway Company; El Paso Union Passenger Depot Company; Forth Worth Belt Railway Company; Galveston Wharf Company; Galveston, Houston & Henderson Railroad Company; Gulf Terminal Company; Galveston Terminal Railway Company; Graysonia, Nashville & Ashdown Railroad [fol. 29a] Company; Houston Belt & Terminal Railway Company; Kansas City, Shreveport & Gulf Terminal Company; L'Anguille River Railway Company; Lake Providence, Texarkana & Western Railroad; Louisiana Railway & Navigation Company of Texas; Leesville, Slagle & Eastern Railway Company; Montana Railroad; New Orleans Public Belt Railroad; New Orleans & Lower Coast Railroad Company; Oklahoma-Southwestern Railway Company; Oberlin, Hampton & Eastern Railway Company; Pine Bluff & Northern Railway Company; The Shreveport Bridge & Terminal Company; Trans-Mississippi Terminal Railroad Company; Thornton & Alexandria Railway Company; The Union Passenger Depot Company of Galveston; The Union Terminal Company; Uvalde & Northern Railway Company; Waco, Beaumont, Trinity & Sabine Railway Company; and West Tulsa Belt Railway Company.

EXHIBIT B TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 14940.*

Application of Rates on Cotton to Gulf Ports

Submitted October 9, 1924. Decided June 23, 1925

1. Practice of applying interstate domestic rates on shipments of cotton delivered to warehouses and com- [fol. 30] presses at the Gulf ports, where delivery is effected at a point other than ship side, found not illegal.

---

*NOTE.—Embraces also No. 13991, Weatherford, Crump & Company vs. Abilene & Southern Railway Company et al.

2. Present relationship between the domestic and export rates found unduly prejudicial to warehouses and compresses located at interior points and back from the water-front at the ports, and unduly preferential of warehouses and compresses located on the water front. Carriers directed to readjust their rates so that the export rates will not exceed the domestic rates by more than the wharfage charges.

REPORT OF THE COMMISSION

MEYER, Commissioner:

For a number of years the export rates on cotton from Arkansas, Louisiana, Oklahoma, and Texas to the Gulf ports have been higher than the domestic rates, the difference representing the approximate average cost of transferring cotton from the back-from-the-water warehouses or compresses at the ports, hereinafter referred to as the uptown facilities, to shipside. For example, the domestic rates on cotton from Texas common points to Houston and Galveston is 80 cents, and the export rates are 85 cents to Houston and 85.5 cents to Galveston. Rates are stated in cents per 100 pounds. The approximate average cost of transferring cotton from the uptown facilities to ship side is 3.5 cents per 100 pounds at both points, and the wharfage charges are 1.5 cents per 100 pounds at Houston and 2 cents at Galveston. Therefore 5 cents at Houston and 5.5 cents at Galveston represents the difference between the export and domestic rates, or, dropping the wharfage charges, 3.5 cents at both ports. The practice of making the export rates [fol. 30a] higher than the domestic rates by an amount sufficient to equalize the uptown and interior warehouses and compresses was approved in Louisiana Cotton, 46 I. C. C. 451, and Galveston Commercial Asso. vs. A. & V. Ry. Co., 77 I. C. C. 388. Hereinafter in referring to the difference between the export and domestic rates only the difference exclusive of the wharfage charges will be intended.

So long as all the warehouses and compresses at the ports remained back from the water, the practice of making the export rates higher than the domestic rates by an amount not more than the cost of delivering cotton from the uptown facilities to ship side equalized the interior and port facili-

ties and all parties were satisfied with the arrangement. But commencing in 1921 disturbing influences were injected into the situation through the placing of high-density compresses on the piers of the Galveston Wharf Company at Galveston, followed by the erection of large warehouses with compresses on the water front at Houston. The compresses are so situated on the piers at Galveston that about 25 per cent of the cotton which they handle is delivered by hand trucks directly to ship side at the piers where the compresses are located, and about 75 per cent is drayed to ships lying at other piers. The water-front warehouses at Houston are so situated that all the cotton which they handle can be hand trucked to ship side. The tariffs do not define ship side delivery, but under the practice at these ports it consists of delivery to within 200 feet of ship's tackle. The water-front warehouses at Houston are so arranged that a considerable part of the storage space in them may be placed within that distance from ship's tackle by the judicious berthing of ships, and from such space cotton is taken by the ship's stevedores. Shifting of vessels from one berth to another is practiced at Houston, so that on a large [fol. 31] part of the cotton stored in these warehouses the hand trucking from warehouse to ship is actually performed by the vessel employees.

Cotton consigned to the wharf presses at Galveston, and to the water-front warehouses at Houston, under domestic bills of lading which do not disclose an intention later to export, is charged the domestic rates the same as cotton consigned to the uptown facilities under similar billing. It is the practice of the carriers to assess the export rates only on cotton which is consigned to the Texas ports under through export bills of lading or domestic bills of lading marked "for export," or which, moving in under domestic bills of lading, is declared for export after arrival at the port. The tariffs permit warehouses or compresses at the Texas ports to declare cotton for export which has moved in under domestic rates and which has been merchandised or compressed at the port. The carriers will then collect the higher export rates and assume the cost of delivering the cotton by switch movement or dray from the warehouses or compresses to ship side. If switching is resorted to the carriers absorb the switching charges out of the ex-

port rates, and if delivery is effected by dray employed by the shipper the carriers will make a maximum allowance of 20 cents per bale, or an average allowance of about 3.5 cents per 100 pounds, to cover *an average allowance of about 3.5 cents per 100 pounds, to cover* the drayage cost. During the cotton shipping season the grain movement is also heavy, causing cars to be in great demand, and the carriers state that they find it more economical to pay the shippers a drayage allowance than to use their cars for switching the cotton. Inasmuch as the difference between the export and domestic rates is approximately equal to the cost of delivery from the uptown facilities to ship side, it will be seen that little if anything would be gained by declaring the cotton for export with the attendant readjust-[fol. 31a] ment of charges, and in practical operation the export rates are actually collected on very little of the cotton which goes through these facilities. Rather the uptown facilities pay the domestic rates and have the cotton drayed to ship side at their own expense without further recourse to the carriers. The same practice is followed on cotton going to the presses located on the wharves at Galveston.

The compression which takes place at the ports is high-density compression. The ocean rates on cotton compressed to high density are lower than on standard compressed cotton by an amount slightly greater than the cost of the high-density compression.

The first indication of dissatisfaction with existing conditions arose when the complaint in No. 13991 was filed. That complaint was presented by a warehouse company at Houston which merchandised or compressed cotton at that point and then reshipped it under transit provisions to Galveston for export. Such cotton moved under through export bills of lading from Houston and the higher export rates were assessed. As before pointed out, cotton consigned to the compresses located on the piers at Galveston would move in under domestic bills of lading and the lower domestic rates would be assessed. Complaint in No. 13991 contended that the service rendered by the carriers on shipments of cotton merchandised or compressed at its facilities in Houston, and then forwarded on export bills of lading through Galveston, was substantially similar to that afforded in connection with shipments consigned to

the wharf compresses at Galveston, and that the charging of the higher export rates on its shipments constituted undue prejudice with resultant damage for which reparation is sought. Unreasonableness was also alleged, but that allegation was withdrawn at the hearing.

[fol. 32] Following the hearing in No. 13991, we received communications from cotton interests at Galveston and interior Texas points stating that large warehouses had been constructed on the water front at Houston, and that the collection of the lower domestic rates on cotton going to those warehouses unduly preferred them to the prejudice of the uptown and interior warehouses. The question of the legality of applying the lower domestic rates on cotton going to the water-front facilities was also raised and we were asked to institute a general investigation into the whole situation. Accordingly, on June 30, 1923, the order in No. 14940 was issued, instituting a general investigation concerning the lawfulness and propriety of the practices of carriers in connection with the application of interstate domestic rates and export rates on cotton from points in Oklahoma, Arkansas Texas, and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, Houston, Texas City, Beaumont, and Port Arthur, Texas, New Orleans, La., and Mobile, Ala., including subports of any of said ports, with a view to determining:

"(1) Whether the practices now alleged to be followed by certain carriers and shippers in applying domestic rates, which are lower than the corresponding export rates, on cotton delivered to water-front warehouses and subsequently exported are authorized by existing tariffs, or whether such practices, or any of them, constitute illegal practices; and

"(2) Whether any change should be made in existing tariff regulations or rates in order to avoid and remove such undue preference, if any, that results or may result in favor of said water-front shippers or localities, and such undue prejudice, if any, that results or may result against said uptown shippers or localities that may be found to exist."

[fol. 32a] No. 13991 was reopened and consolidated with the general investigation. Similar investigations were in-

stituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the application of the intrastate rates in those States, and the hearings were held jointly with those commissions.

Taking up first the question of the legality of applying domestic rates on cotton delivered to the water-front warehouses or compresses:

The tariffs vary somewhat as to the form in which the rates applicable to export shipments are published, but in one way or another the carriers hold themselves out to effect ship side deliveries under those rates. Cotton delivered to the water-front warehouses or compresses is not delivered at ship side. Rather it is delivered into the custody of the warehouses or compresses at points more than 200 feet from ship's tackle, and, after merchandising or compressing, must be hand trucked at Houston, and hand trucked or drayed at Galveston, to a place where it will be accepted by the ship. A shipment of cotton going into a warehouse for merchandising usually contains several grades of cotton, and after merchandising may move out to several different destinations. Merchandising consists of weighing, sampling, marking, and grading the cotton and arranging it in lots of even grade.

Although a rate published as applicable to export shipments should be applied to such shipments in preference to an interstate domestic rate if the service which the carrier holds itself out to perform under the export rate is actually rendered, where, as here, that completed service is not rendered, but rather a delivery of the character which would be effected on a domestic shipment is made, we are of opinion that it is not illegal to apply the interstate domestic rate [fol. 33] even though the shipment at some time subsequent to delivery may be exported. Therefore, except where shippers avail themselves of transit provisions at the ports, under which the carriers are obligated to place the cotton at ship side, the collection of the interstate domestic rates on cotton delivered to the water-front warehouses or compresses at Houston and Galveston is not, in our judgment, illegal. In view of the fact that the interstate and intrastate rates on cotton from Texas points to the ports for other than ship side deliveries are the same, it is unnecessary to pass upon the question whether shipments moving

under domestic bills of lading from interior Texas points to the warehouses or compresses at Houston and Galveston are moving in export or intrastate commerce.

Turning now to the question of whether there should be any change in the present rates:

Both the uptown facilities at Galveston and the warehouses situated at interior Texas points contend that the water-front facilities at Houston have an unfair rate advantage under the present adjustment. The water-front facilities, on the other hand, contend that they have no advantage to which they are not justly entitled by reason of their location. They state that they have expended large sums of money for the acquisition of water frontage and that their uptown competitors have been influenced in the selection of their present locations by the fact that sites are cheaper back from the water than on the water front. They cite I. C. C. v. Diffenbaugh, 222 U. S. 215, wherein the Supreme Court said that the law does not attempt to equalize fortune, opportunities, or abilities. They further contend that merchants using interior warehouses now have an advantage over merchants using the port warehouses and that this advantage would be accentuated if the present differ- [fol. 33-a] ence between the export and domestic rates was removed or narrowed. This advantage they explain as follows: Merchants using interior warehouses and shipping under through export bills of lading from these warehouses to foreign destinations pay but one merchandising charge, which amounts to about 25 cents per bale. On the other hand, merchants using the warehouses at the ports purchase a part of their cotton at the interior warehouses and then have it again merchandised at the port at an additional merchandising charge of from 50 to 65 cents per bale. A bale of cotton will weigh in the neighborhood of 500 pounds, and the port merchant therefore pays on this class of cotton from 10 to 13 cents per 100 pounds more for merchandising service than the interior merchant. But this is purely a commercial disadvantage which can be obviated by the port merchant purchasing direct from the country buyer instead of at the interior warehouses and has nothing to do with the trasportation of the cotton.

The waterfront facilities and the carriers contend that the transportation costs connected with the carriage of ship-

ments to the ports under through export bills of lading are greater than those connected with domestic shipments to the ports, and that the value of the service to the shipper is greater. They state that it costs more to make out an export bill of lading than a domestic bill of lading; that there is more telegraphing and telephoning, added messenger service, and greater free time accorded export shipments than domestic shipments. As before pointed out, however, the export rates are not confined in their application to shipments moving on through export bills of lading, and the added elements of cost mentioned above would vary per unit of 100 pounds, dependent upon the size of the total consignment. Furthermore, the Galveston interests show that the [fol 34] average detention of cars containing export shipments is little if any greater at that port than the average detention of cars containing domestic shipments. The record is not convincing that differences in transportation costs will justify the continuance of the present difference between the export and domestic rates. Especially is this so when it is considered that differences in transportation costs have been generally disregarded in keeping the Texas ports and industries at these ports on a rate parity.

The tariffs permit only one free stop in transit for merchandising. If a second stop is made a transit charge is assessed. We will compare the transportation charges accruing under the present rate adjustment against a shipment originating at an interior point in Texas common-point territory, merchandised or compressed at an uptown facility at Galveston or Houston, and then transferred to ship side, with those accruing against a similar shipment, originating at the same point, merchandised or compressed at a waterfront warehouse at Houston, and then delivered to ship side. Upon delivery of the shipment at the uptown facility the railroad would collect the domestic rate of 80 cents, and if, after merchandising or compressing the cotton, the shipper declares it for export, the railroad would collect in addition the difference between the export and domestic rate of 3.5 cents per 100 pounds. The railroad would then switch the cotton to ship side, or make an allowance to the shipper to cover what the shipper had to pay a drayman to haul the cotton to ship side, subject to a maximum of 20 cents per bale. Or the shipper might merely pay

the rate of 80 cents and then hire the cotton drayed without further recourse to the railroad. In either event, however, it would cost him on the average 83.5 cents per 100 pounds, exclusive of wharfage, to get the cotton to ship side. If he [fol 34-a] pays the 83.5-cent rate, he would be entitled to one free transit privilege. On the other shipment which went to the water-front warehouse the railroad would collect the rate of 80 cents, and the only added cost to get the cotton to ship side, exclusive of wharfage, would be the cost of hand trucking it from the place where it is stored in the warehouse to ship side. As before pointed out, a large part of this hand trucking is done by employees of the ship. Also, such a shipment might be stopped once in transit for merchandising under the 80-cent rate. There is, of course, some hand trucking at the uptown facilities to get the cotton to the railroad car or to the dray, which may in some cases be greater and in others less than that at the water-front facilities.

As contended by the water-front facilities it is not our function arbitrarily to equalize rates in such manner as to deprive any industry of the legitimate advantage of its location. But we do not think that such a situation is presented here. Rather the question before us is whether we shall permit this somewhat unusual adjustment of rates to be continued now that the conditions which previously justified it have changed, and it is shown that it gives to large and powerful interests an advantage over their competitors. Usually the same rate applies to all industries on the same road within the switching limits of a municipality, and ship-side rates, if higher than the domestic rates, are only enough higher to cover the strict wharf or pier charges, such as handling, from car to ship side, and wharfage. The rates under consideration are not so made. Rather there is a difference of 3.5 cents in the rates not accounted for by the wharf or pier charges. Unloading charges are absorbed on both domestic and export shipments.

[fol. 35] Under the present adjustment the uptown facilities can secure what in substance is a second merchandising or compression-in-transit service free of charge. This is secured through the shipper paying the domestic rates and then having his shipments drayed from the warehouse to ship side without declaring them for export. The uptown

facilities contend that under any readjustment that is made in the rates they should continue to receive a free second merchandising or compression in transit on cotton purchased by them which has already been concentrated at the through rate. This we do not consider a reasonable request. Shipments stopped at other points for second merchandising or compressing must pay a transit charge and we see no reason why an exception should be made in the case of the uptown warehouses or compresses at the ports. Cotton passing through these uptown facilities is, however, entitled to one free transit privilege.

We are of opinion that the present adjustment of rates on cotton from Oklahoma, Arkansas, Texas and Louisiana to the Texas Gulf ports is unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses, and that the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the ports, except that the export rates should be made higher than the domestic rates by an amount equal to the wharfage charge, which at Galveston is 2 cents and at Houston 1.5 cents. This finding is not to be construed as condemning the practice of the carriers of absorbing drayage charges in lieu of switching. Most of the testimony offered pertained to the situation at Houston and Galveston, but representatives of other Texas ports stated that any change made at Houston or Galveston should be extended to the other Texas ports in order to preserve the relation-[fol. 35a] ships now existing. The investigation did not cover the reasonableness of the rates and our findings herein are not to be construed as authorizing the carriers to increase their present revenues. Rather, the rates should be so readjusted as to preserve existing revenues.

At New Orleans there are no strictly water-front facilities, and no complaint exists with regard to the present relationship of the export and domestic rates at that point. No evidence was introduced with regard to Mobile. We shall, therefore, suggest no change in the rates through ports other than the Texas ports at this time; but if, by reason of the changes suggested in the rates to the Texas ports, it becomes necessary to change any of the existing rates to

other ports, that matter may be brought to our attention for further consideration.

Complainant in No. 13991 has failed to prove damages and its prayer for reparation is denied.

HALL, Commissioner, dissenting:

"As stated in the majority report the practice of making the export rates higher than the domestic rates by an amount sufficient to equalize the uptown warehouses in ports and those in the interior was approved in Louisiana Cotton, 46 I. C . C. 451, and Galveston Commercial Asso. vs. A. V. Ry. Co., 77 I. C. C. 388. In the former case we said:

"The respondents have shown that unless the rates from Louisiana points to New Orleans for export exceed the rates to the same place for local delivery by not more than 3 cents injustice to the interior points will result. The converse is true as to rates for export that exceed the local rates by less than 3 cents, and any diminution in this spread is an advantage to the interior points, and a disadvantage to New Orleans. To that extent we find that the rates from [fol. 36] Shreveport and from other points taking similar rates to New Orleans proper under the proposed adjustment should be reduced in order to preserve the spread of 3 cents. In other words, when the rate for ship side, or for export, is 52.5 cents the rate for depot delivery should not exceed 49.5 cents."

And in the second case cited we said:

"It is obvious that a uniform basis for fixing export rates on cotton from the Southwest to New Orleans and the Texas ports should be established, and that export rates which exceed the domestic rates by the amount of the charge for moving the cotton from the rail terminus to ship side are not only reasonable and proper but are necessary to avoid the discrimination pointed out in Louisiana Cotton, supra. * * * (Id. 413.)"

Now that practice is found to be unduly prejudicial on the ground that the conditions which previously justified it have changed. The nature and extent of that change are

not disclosed. The only apparent change is the recent location of warehouses and compresses on the water front at Houston and Galveston. On much of the cotton handled through water-front facilities an additional expense is incurred to place it within reach of ship's tackle. At Galveston about 25 per cent is delivered by hand trucks to ship side and about 75 per cent is drayed. It also appears from the majority report that in practical operation the uptown facilities pay the domestic rates and have the cotton drayed to ship side at their own expense.

There is nothing in the report to show whether it costs the uptown facility more or less than it costs the water-front facility to place its cotton within reach of the ship's tackle. True, at Houston, by particular berthing of ships, [fol. 36-a] some warehouses can be brought within reach of the ship's tackle, but that is not a transportation condition and it is with transportation conditions that we must deal.

The majority report disclosed no facts which would indicate the extent, if any, of the disadvantage of the uptown facilities or what may be their countervailing advantages. Each facility may choose the location which on the whole it prefers. If that location has some disadvantages it does not follow that the carriers may be called upon to cure them by readjustment of rates. One facility selects the water front, another a site one mile from the water front, and the third a site five miles from the water front. It may cost the third more than the first to place cotton within reach of ship's tackle and not less than the first to place cotton somewhere else. But the carrier will have performed the transportation service when it delivers the cotton for each at the billed destination under the same published rate. Our former solicitude for the interior point seems to have shifted to the uptown facility at the port. Nothing that was said before is here unsaid. We simply forget it or ignore it. If we were right then we cannot be right now. Construction of a warehouse on a pier can not change the rights of interior points as against the rights of ports, both served by the same connecting rails, to rates that are reasonable and free from undue prejudice. It seems to me that the action of the majority may be characterized as arbitrary, in a legal sense, and thus comes within the condemnation expressed by the Supreem Court in I. C. C. vs. Diffenbaugh, 222 U. S. 215.

[fol. 37] Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE IN WASHINGTON, D. C., ON THE 23D DAY OF JUNE, A. D. 1925

No. 14940

Application of Rates on Cotton to Gulf Ports

No. 13991

WEATHERFORD, CRUMP & COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

It appearing, that by order dated June 30, 1923, the Commission reopened the proceeding in No. 13991 for further hearing and entered upon an investigation in that proceedings and in No. 14940 into and concerning the application of rates on cotton to Gulf ports;

It further appearing, That full investigation of the matters and things involved has been had and that the Commission has, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

And it further appearing, That the Commission has found in said report that the present adjustment of interstate domestic rates and export rates on cotton from points on the lines of respondents and above-named defendants in Oklahoma, Arkansas, Texas and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, Houston, Texas City, Beaumoint and Port Arthur, Texas, [fol. 37-a] including subports of any of said ports, is unduly prejudicial to the uptown and interior warehouses and compresses and unduly preferential of the water-front warehouses and compresses at said ports, and that the rates should be so adjusted that one rate will apply for all deliveries within the usual switching limits of the respective ports, except that the export rates on the traffic described should be made higher than the domestic rates on similar traffic to the same ports by an amount equal to the wharfage charge at the respective ports.

It is ordered, That the respondents in No. 14940, and above-named defendants be, and they are hereby, notified and required to cease and desist, on or before October 12, 1925, and thereafter to abstain from practicing the undue prejudice and preference found in said report to exist.

It is further ordered, That said dependents and respondents be, and they are hereby notified and required to establish, on or before October 12, 1925, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply interstate demestic rates and export rates, charges, regulations and practices, in the manner indicated in said report, which will prevent and avoid the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 38] EXHIBIT C TO BILL OF COMPLAINT

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 28TH DAY OF DECEMBER, A. D. 1925

No. 11965

GALVESTON COMMERCIAL ASSOCIATION et al.

v.

ALABAMA & VICKSBURG RAILWAY COMPANY et al.

Upon further consideration of the record in the above entitled proceeding, and of the petition of defendants for modification of the order entered therein on the 2nd day of February, 1923, to permit of a readjustment of rates now in effect to Gulf ports under the terms of such order to comply with our findings in Rates on Cotton to Gulf Ports, 100 I. C. C. 159, and order of June 23, 1925, in Docket Nos. 14940 and 13991.

It is ordered, That the above entitled proceeding be, and it is hereby reopened and assigned for further hearing in connection with Dockets Nos. 14940 and 13991 on the question of whether the order therein should be modified.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 38-a] EXHIBIT D TO BILL OF COMPLAINT

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 28TH DAY OF DECEMBER, A. D. 1925

No. 14940

Application of Rates on Cotton to Gulf Ports

No. 13991

WEATHERFORD, CRUMP & COMPANY

v

ABILENE & SOUTHERN RAILWAY CO., et al.

Order

Upon further consideration of the record in the above-entitled proceedings and of petitions filed by parties thereto,

It is ordered, That the order of June 30, 1923, in Docket No. 14940 entering upon an investigation into and concerning the lawfulness and propriety of the practices of respondent carriers in connection with the application of interstate domestic and export rates on cotton from points in the states of Oklahoma, Arkansas, Texas and Louisiana (on and west of the west bank of the Mississippi River) to Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas, New Orleans, La., and Mobile, Ala., and subports of any of said ports be, and it is hereby broadened to include therein the determination of (a) what services are accorded and what charges, payments or allowances are made by said carriers in connection with the handling of cotton at interior points, including payments for compression, and

whether any of such services, charges, payments or allowances result or may result in unjust discrimination or un-
[fol. 39] due prejudice or preference, or otherwise violate any provision of the interstate commerce act, and what changes, if any, should be made in such services, charges, payments, or allowances; and (b) whether the findings in said proceedings shall be extended to any ports in Texas, Louisiana or Alabama, other than those specified above.

It is further ordered, That said proceedings be, and they are hereby reopened for further hearing in order to determine whether conditions exist which were not developed during the previous hearings, or whether changes have since taken place which would justify any modification of our findings in Rates on Cotton to Gulf Ports 100 I. C. C. 159, and the order entered in Dockets Nos. 14940 and 13991 on June 23, 1925; to determine what rates shall be established to comply with our findings and order; and to determine the issues set forth in the next preceding paragraph hereof.

It is further ordered, That the effective date of our order of June 23, 1925, as modifled to become effective February 12, 1926, be, and the same is hereby postponed until further order of the Commission.

And it is further ordered, That these proceedings be set for further hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 39-a] EXHIBIT E TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 14940

Application of Rates on Cotton to Gulf Ports

Submitted October 14, 1926. Decided April 4, 1927.

1. Upon rehearing, found that the relationship between interstate rates on cotton for city deliveries and ship-side deliveries at the Texas and Louisiana ports is unduly preferential of warehouses and compresses located on the water front at such ports, and ship-

pers using such facilities, and unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports, and shippers using such facilities.

2. Basis for equalizing the city-delivery and ship-side rates prescribed.
3. Regulations and practices of respondents pertaining to the concentration and compression of cotton at interior points found not to result in undue prejudice to warehouses or compresses located at the ports, or to shippers using such facilities, or to unduly prefer warehouses or compresses located at interior points, or shippers using such facilities.
4. Prior reports: In No. 14940 and No. 13991, 100 I. C. C. 169; in No. 11965, 77 I. C. C. 388.

This report also embraces No. 13991, Weatherford, Crump & Company v. Abilene & Southern Railway Company, et al, and No. 11965, Galveston Commercial Association v. Alabama & Vicksburg Railway Company.

[fol. 40] REPORT OF THE COMMISSION UPON REHEARING

MEYER, Commissioner:

In our prior report, 100 I. C. C. 159, we found that the existing adjustment of rates on cotton from Oklahoma, Arkansas, Louisiana and Texas, to the Texas port, under which the ship-side rates, exclusive of wharfage charges, are from the three States first mentioned 3 cents, and from Texas 3.5 cents per 100 pounds higher than the city-delivery rates, was unduly prejudicial to warehouses and compresses located at interior points and back-from-the-water-front at the ports and unduly preferential of warehouses and compresses located on the water front. We ordered the carriers to remove this prejudice and preference by establishing equal rates, exclusive of wharfage, for all deliveries within the usual switching limits of the Texas ports, which would include deliveries at back-from-the-water-front and water-front warehouses and compresses and deliveries at the wharves or piers. Ship-side rates we found should be made by adding wharfage charges to the rates so equalized. No complaint was made with regard to the relation-

ship of the ship-side and city-delivery rates to the Louisiana ports or Mobile, Ala., and no change was directed in the relationship of the respective rates to those ports. We said, however, that if it developed that the changes ordered at the Texas ports necessitated changes at other ports the matter of rates to such ports might be brought to our attention for further consideration. The reasonableness of the rates was not in issue and we said that the equality of treatment which we ordered in the rates to the Texas ports might be effected by readjustments which would preserve but not increase the carriers' revenues. Disagreement among interested parties as to what equalized rates would meet our suggestion as to revenue maintenance resulted in [fol. 40-a] the carriers being unable to publish new rates within the time specified in our order and its effective date was accordingly postponed. In the meantime interests at Houston had filed petitions asking that the proceedings be reopened and broadened to cover practices pertaining to the concentration and compression of cotton at interior points. It was alleged in those petitions that since the hearings upon which the original report was predicated changes had taken place in the physical arrangement of certain warehouses and compresses at the ports, and in the methods of handling cotton at those facilities, and that certain practices of the carriers at interior points were unduly preferential of interior compresses and ware houses and unduly prejudicial to warehouses and compresses at the ports. Petitions were also presented by interests at New Orleans, La., and by the Texas Farm Bureau Cotton Association asking that the proceedings be reopened. Another petition, filed by respondents, set up that compliance with our order coupled with maintenance of existing revenues was impossible unless our order in Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, was modified. In response to these various petitions the proceedings were reopened and broadened and further heard on the following questions:

(1) Whether changed conditions or conditions which existed at the time of the previous hearings but which had not been developed on the record, justify any modification of our findings and order;

(2) Whether our findings shall be extended to apply to ports other than those covered by our prior order;

(3) What rates shall be established to conform to our findings; and,

(4) What services are accorded and what charges, payments or allowances are made by respondents in connection [fol. 41] with the handling of cotton at interior points, including payments for compression, and whether any of such services, charges, payments or allowances, result, or may result, in unjust discrimination or undue preference, or otherwise violate any provision of the interstate commerce act, and what changes, if any, shall be made in such services, charges, payments or allowances.

Galveston Commercial Asso. v. A. & V. Ry. Co., supra, was also reopened and set down for hearing as to what, if any, modification should be made in the order in that case to permit of compliance with our findings herein. Extensive further hearings were held at which the various ports and interior interests and respondents have been exhaustively heard. Warehouses and compresses located back from the water front at the ports will be referred to hereinafter as uptown warehouses and compresses. Rates, charges and differences in rates and charges will be stated in cents per 100 pounds unless otherwise specified. Cotton shipping interests generally at Galveston support our previous findings relative to equalization of the ship-side and city-delivery rates, as do certain interests at Houston having uptown facilities. But the majority of the Houston interests owning or using uptown facilities, and all of the interested water-front facilities at that port, oppose our previous findings and ask that the existing basis of rates be continued in effect. Interior interests generally, including shippers, chambers of commerce, commercial and banking organizations, and warehouses and compresses, but excepting the Texas Farm Bureau Cotton Association and interests at Alexandria, La., strongly urge that the findings in our prior report as to equalization of the rates be affirmed and that the new basis be extended to the Louisiana ports. The Texas Farm Bureau Cotton Association which handles about 10 per cent of the cotton grown in [fol. 41-a] Texas, and which uses principally uptown facilities at Houston which are controlled by interests which control one of the largest water-front facilities at that

point, advocates retention of the existing basis of rates. The reasons for the position of this association will be explained later in the report. New Orleans interests are satisfied with the existing two-rate plan and urge that it be not disturbed at that point, and Alexandria interests take the same position in so far as rates in Louisiana are concerned. Mobile interests ask that any changes made at New Orleans be extended to Mobile on cotton shipped from the four States covered by the proceeding. Corpus Christi, Texas, asks for parity of treatment with Houston and Galveston.

As indicated in our prior report, similar investigations were instituted by the Railroad Commission of Texas and the Public Service Commission of Louisiana relative to the intrastate rates in those States. When we reopened our investigation the Texas commission reopened its investigation and the further hearings were held jointly with that commission.

The genesis of the present two-rate plan and a chronicle of the events leading up to the attack which is made upon it in these proceedings are set forth in our prior report. Briefly the history of the situation is this: In Louisiana Cotton, 46 I. C. C. 451, and Galveston Commercial Asso. v. A. & V. Ry. Co., supra, we found in effect that ship-side rates on cotton to New Orleans and the Texas ports, exclusive of wharfage charges, should exceed the rates for deliveries at uptown warehouses or compresses by an amount sufficient to cover the average cost of handling the cotton from the uptown warehouses and compresses to ship side. At that time the important warehouses and compresses at the ports were all located back from the water front and the relationship there prescribed between the city-delivery and ship-side rates substantially equalized merchants at the [fol. 42] ports who drew their cotton from the interior, merchandised it at the uptown facilities and then moved it to ship side, with interior merchants who shipped their cotton direct to ship-side. This relationship between the city-delivery and ship-side rates proved generally satisfactory until water-front facilities were erected first at Galveston and later at Houston. These new water-front facilities were and are within the switching limits of the respective cities and deliveries thereat were and are made by respond-

ents at the city-delivery rates. Merchants using these water-front facilities thus gained an advantage over merchants using interior or uptown facilities, for they secured delivery of their cotton practically at ship side at the lower city-delivery rates, whereas interior merchants shipping direct to ship side were compelled to pay the higher ship-side rates, and merchants using the uptown facilities were compelled either to pay the shipside rates if transit were availed of at the port or bear the cost of getting their cotton from such facilities to ship side. Later, in order to compete with the water-front facilities, the uptown compresses were compelled to shrink their charges sufficiently to cover the cost of getting the cotton from their presses to the water-front. Thus the conditions which gave birth to the existing relationship between the ship-side and city-delivery rates were disrupted, a realignment of interest was created and the present litigation precipitated.

The further hearings disclose that some changes have taken place in the extent and physical arrangement of certain of the water-front facilities in existence at the time of the prior hearings and in the methods of handling cotton at those facilities. Essentially, however, the situation is as depicted in our prior report. At the time of the prior hearings certain of the water-front facilities at Houston were so arranged and operated that cotton was stored within 200 feet of ship's tackle, delivery within that distance of ship's tackle being considered as delivery at ship [fol. 42-a] side under the practice of the port. The present record shows that the facilities to which our prior report had reference in this connection have been enlarged and that cotton is not now stored in the space above referred to. It is now stored in warehouses immediately in the rear of this area and is handled by an overhead trolley system to ship side. It also appears that shifting of vessels from berth to berth at the same wharf is no longer practiced at Houston, but that shifting of vessels from wharf to wharf is still the rule where the cotton available for loading is of sufficient quantity to justify such shifting. At Galveston there is no shifting of vessels. The further hearings disclose that additional water-front facilities have been completed since the prior hearings and that others are about to be built.

The respective shipping interests have taken advantage of the reopening of the proceedings, according as they favor or oppose the elimination of the existing difference between the city-delivery and ship-side rates, to lay before us with infinite detail the advantages and disadvantages of the present adjustment and the readjustment found proper in our prior report. Much of what is placed before us on further hearing and argument relative to this phase of the proceeding is but repetition of facts and arguments previously presented and fully considered at the time of the adoption of our prior report. The manner in which the cotton is handled and the rates applied under the existing adjustment is set forth in our prior report and need not be repeated here. Careful consideration of the situation as developed upon the whole record convinces us of the correctness of our former findings that the existing adjustment of interstate rates on cotton to the Texas ports, from the states covered by the proceeding, gives to the [fol. 43] water-front warehouses and compresses, and shippers using such facilities, an unnatural and unlawful preference, and subjects the uptown and interior warehouses and compresses, and shippers using such facilities, to an unnatural and unlawful disadvantage to their undue prejudice.

Considering now the question of whether our previous finding was correct that the undue preference and prejudice should be removed by a readjustment which will result in the ship-side rates becoming higher than the city-delivery rates by no more than the wharfage charges: There is little, if any, more service performed in delivering shipments at the wharves and piers under the ship-side rates than is performed in delivering shipments at the water-front warehouses or compresses at the city-delivery rates. For illustration, at the water-front plant of the Houston Compress Company the wharf parallels the water front and immediately back of and paralleling the wharf are warehouses. There is a switch track on and extending the entire length of the wharf. There are also switch tracks alongside the warehouses. Cotton shipped from an interior warehouse, or ordered switched from an uptown warehouse under transit, for ship-side delivery upon the wharf at this facility would be charged ship-side rates. But upon similar cotton,

originating perhaps at the same point and handled in substantially the same manner by the carriers, delivered upon the side tracks serving the adjacent warehouses the lower city-delivery rates would be applied. In both instances the carriers would assume the cost of unloading the cotton; in the one case from the car to the wharf and in the other from the car to the receiving platform of the warehouses. Those who are striving to have us reverse our previous finding that the rates, exclusive of wharfage charges, should be equalized, contend that the carriers are put to some greater [fol. 43-a] expense in connection with the shipments delivered at ship-side because of greater free time allowances and other minor incidental services. That question was discussed in our prior report and nothing developed upon further hearing or reargument convinces us that what we there said is unsound.

Practically all of the testimony offered with regard to ports other than the Texas ports pertains to New Orleans. The situation at that port is different in certain respects from that at the Texas ports. At the time of the previous hearings the only warehouse at New Orleans so situated that cotton could be delivered from it to ship side without the intervention of railroad switching or extended drayage was the Public Cotton Warehouse which is owned by the State of Louisiana and operated as a part of the state water-front terminal facilities. This warehouse consists of several buildings immediately in the rear of the state wharves and connected with them by covered runways. Between the wharves and the warehouse buildings are sampling yards. Cotton is moved from these buildings to ship side at the adjacent wharves by small motor trucks with trailers, the distances ranging from 1,000 to 4,000 feet. To other wharves the movement is usually by railroad switching service, although drays are used for the shorter hauls to a limited extent. Since the previous hearing another warehouse has been opened adjacent to the state wharves at New Orleans by interests that own certain of the larger water-front facilities at Houston. This warehouse is so situated that cotton is conveyed from it to ship side by overhead trolley, the distances ranging from about 400 to 1,200 feet.

There are railroad tracks on the wharves adjacent to the Public Cotton Warehouse and switch tracks directly serve

the warehouse. The manner in which the respective rates [fol. 44] are applied at New Orleans is similar to that at the Texas ports. For example, cotton delivered by respondents on the tracks of the Public Cotton Warehouse is charged city-delivery rates which, with certain exceptions which will be hereinafter referred to, are 5 cents per 100 pounds less than the ship-side rates, but cotton delivered by respondents on the tracks located on the adjacent wharves is charged the higher shipside rates. The services rendered in both instances are practically the same, except that respondents assume the cost of unloading from the cars under the ship-side rates and do not under the city-delivery rates. There are a number of uptown warehouses and compresses at New Orleans and the city-delivery rates are charged on shipments delivered at these facilities. Free concentration in transit is permitted at New Orleans by lines other than the Missouri Pacific on cotton not previously concentrated at interior points and if transit is availed of ship-side rates are charged upon delivery of the cotton to the water-front. Respondents have no charge at New Orleans known as a wharfage charge, but publish a "handling" charge of 5 cents per 100 pounds, which in Handling Charges at Louisiana Ports, 61 I. C. C. 379, we found was the equivalent of the separate wharfage and handling charges at the south Atlantic ports. At the south Atlantic ports the wharfage charge on cotton is uniformly 2 cents per 100 pounds. Respondents contract with stevedores or longshoremen to unload cotton from cars at New Orleans at charges usually of 4 or 5 cents per bale, or something less than 1 cent per 100 pounds. There is also a "tollage" charge of three-quarters of a cent per 100 pounds at the state-owned wharves, but no similar charge is assessed at the railroad-owned wharves. As hereinbefore indicated, in Galveston Commercial Asso. v. A. & V. Ry. Co., supra, we prescribed reasonable relationships as between the rates on [fol. 44a] cotton from Louisiana, Arkansas and Oklahoma to New Orleans and Galveston, Houston and Texas City, Texas. In fixing the proper relationships as between these ports slight differences in terminal costs were disregarded. We are of the opinion and find that the relationships there prescribed should be maintained, except that the ship-side rates should exceed the contemporaneously maintained city-delivery rates to both New Orleans and the Texas ports

by not to exceed 2 cents per 100 pounds. To the extent necessary to permit respondents to comply with our findings herein our findings in the Galveston Commercial Asso. case are modified.

The preponderance of the cotton moving through the Texas ports originates in Texas. Of the 6,375,302 bales delivered at Houston and Galveston during the 1924-1925 shipping season 5,229,183 bales originated in Texas. The difference between the ship-side and city-delivery rates from Texas to the Texas ports, including wharfage, is 5.5 cents. From the other states embraced in the investigation to the Texas ports, and from Louisiana and Arkansas to New Orleans, the difference is generally 5 cents. For competitive reasons the carriers serving Oklahoma and northern Texas have not maintained the usual relationship between the ship-side and city-delivery rates from those states to New Orleans. From Oklahoma the ship-side rates to New Orleans generally do not exceed the city-delivery rates by more than 1.5 cents, and from northern Texas to New Orleans they are in many instances lower than the city-delivery rates. For example, from Dallas, Texas, the ship-side rate to New Orleans is 10.5 cents less than the city-delivery rate.

Respondents serving the Texas ports contend that if the shipside rates, exclusive of the wharfage charges, are to be placed on a parity with the city-delivery rates the equalization should be effected by increasing the city-delivery rates [fol. 45] 3 cents per 100 pounds and reducing the shipside rates, exclusive of wharfage, to the level of the increased city-delivery rates. The rates on cotton in Texas are blanketed for hauls in excess of 210 miles within so-called common-point territory at 80 cents for city deliveries and 85.5 cents, including wharfage, for shipside deliveries. The proposal of respondents would result in rates of 83 cents for city deliveries and 85 cents, including wharfage, for shipside deliveries.

The increase in the city-delivery rates proposed by respondents is not seriously objected to by those who support the equalization of the rates, but it is opposed by those who support the existing basis of rates. Opposition is particularly raised to the proposed increase in the city-delivery rates by the Texas Farm Bureau Cotton Association. As before indicated, this association concentrates its cotton at

an uptown warehouse at Houston and pays the city-delivery rates to such warehouse. Prior to the creation of the water-front facilities this cotton was charged 3.5 cents additional to get to shipside, but owing to the advantage enjoyed by the water-front facilities under the existing difference in the city-delivery and shipside rates, the uptown warehouses or compresses, in order to compete successfully with the water-front facilities, are now compelled to absorb the cost of switching or draying the cotton to shipside, thus enabling the association to get its cotton to shipside at the city delivery rates. In other words, the creation of the water-front facilities, coupled with the unfair relationship between the city-delivery and shipside rates, has resulted in shifting the burden of handling the cotton from the uptown facility to shipside f-om the owner of the cotton to the warehouse. Were the uptown warehouse to discontinue the practice of absorbing the cost of handling the cotton to shipside the association would be compelled to pay the [fol. 45a] higher shipside rates to get its cotton to vessels, or otherwise bear the expense. Our findings will result in reductions in the shipside rates.

The contentions of the lines serving New Orleans as to what rates are necessary to preserve their revenues are similar in effect upon the city delivery rates as those of the lines serving the Texas ports.

Respondents do not contend that the increases proposed in the city-delivery rates are necessary to preserve existing gross revenues, but they state that increases in operating expenses under an equalized basis of rates will necessitate the increases which they have suggested if their net revenues are to be preserved. Undoubtedly the expense to respondents of handling certain classes of cotton under equalized rates will be somewhat increased, and, although the reasonableness of the level of the rates is not in issue, we think that these increased expenses to respondents should not be overlooked in determining what equalized rates shall be established to conform to our findings. Concomitantly, however, consideration should be given to the fact that, generally speaking, little, if any, greater service is performed by respondents in connection with the transportation of cotton from an inland point to the water front

whether it be stopped in transit at an interior point for merchandising or at an uptown warehouse at the port. Respondents will transport cotton once stopped in transit for merchandising at an interior point to a water-front warehouse at the city-delivery rate, but if the cotton is merchandised at an uptown warehouse at the port, instead of at an interior point, and is then ordered to the water front under transit the shipside rate is charged. The services rendered are practically the same in both instances. Or, as to the latter class of shipments, the uptown ware house or compress may elect to treat the movement from the ware- [fol. 46] house or compress to the water front as a new shipment in which event a switching charge in addition to the city-delivery rate is assessed; or the uptown warehouse or compress may elect to dray the shipment to the water front at its own expense in which event only the city-delivery rate is charged. But, however handled, respondents receive more revenue from the shipment merchandised at the uptown facility than they receive from the shipment merchandised at the interior point and delivered to a water-front warehouse or compress or, what is equivalent, perform relatively less service for the same revenue. Under equalized city-delivery and shipside rates, respondents would be obligated to deliver both classes of shipments to the water front at the same rates, and it is to recoup for the loss of revenue on the class of shipments now charged shipside rates, under any reduction in such rates, and to compensate for services rendered in handling from the uptown facilities to the water front the class of shipments now delivered to such facilities at city-delivery rates, that respondents seek the basis of equalization above referred to. In this connection, however, it should be remembered that under our denial of second free concentration at the ports respondents will ordinarily not be obliged to assume the handling cost from uptown facilities to water front of cotton previously concentrated, or if they are in any case there will be an offsetting transit charge.

Upon consideration of all the facts and circumstances we are of opinion and find that, for the purposes of this case, a fair and reasonable basis for equalizing the city-delivery and shipside rates will be to increase the city-delivery rates 1 cent per 100 pounds and reduce the shipside rates, exclu-

sive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city-delivery rates. This basis of equalization should be applied from [fol. 46-a] all the states covered by the investigation to both the Texas and Louisiana ports, except that this finding should not be construed as condemning the practice of the lines serving New Orleans of maintaining that port on a parity with Galveston and Houston in the matter of export rates on cotton from Oklahoma and Northern Texas. That question is not here in issue. Furthermore, the above finding is without prejudice to further inquiry into the reasonableness of the above rates in connection with other cases now pending.

The record is not sufficiently developed to justify findings as to the rates to Mobile, Ala.

The tariffs of respondents authorize one free stopping-in-transit for concentration and this may be taken at an interior point or at the port. If a second stopping-in-transit for concentration takes place a charge of 3.5 cents per 100 pounds is assessed. As pointed out in our prior report, under the existing adjustment of rates, the warehouses at the ports secure what in effect is a second free concentration privilege. Under a one-rate plan such as herein found proper, the uptown warehouses would be deprived of this second free concentration unless the existing transit tariffs are changed. These warehouses contend that unless they are given a second free concentration they will be at a disadvantage as compared with the water-front warehouses in handling cotton previously concentrated in transit at interior points. The advantage which the water-front facility has in the handling of this class of cotton is a natural one derived from its location, and the present record will not support a conclusion that this advantage should be neutralized by granting second free concentration in transit at the port.

In our prior report we referred to the fact that in order to conserve cars for line-haul movements, and as an aid in preventing terminal congestion during periods of heavy [fol. 47] traffic, respondents make allowances to shippers who in lieu of switching dray their cotton from the uptown warehouses and compresses to shipside, and said that we saw no reason for disturbing that practice. The allow-

ances are made only on cotton which respondents are under obligation to transport to shipside under transit arrangements. The water-front facilities now contend that, if the city-delivery and shipside rates are to be equalized, respondents should be required either to discontinue the drayage allowances or make allowances for handling cotton from the water-front warehouses to shipside. Respondents ask us to determine whether such allowances may be made at the water-front facilities, and if they may be made what they should be. Upon the present record, we see no reason for condemning reasonable allowances for drayage from the uptown facilities under the circumstances recited above, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable considering the benefit to respondents flowing from such substitute service, and must not be used as a cloak for unlawful preference to shippers furnishing such substitute service. Not all of the cotton handled by the water-front facilities is delivered to shipside at adjacent wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water-front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances. This applies equally to barging where barging is used as a substitute for switching. But upon cotton delivered to shipside from and by water-front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses a different condition exists. The hand or electric trucking, or movement by overhead trolley, from the part of the water-[fol. 47-a] front facility known as the warehouse or compress to that part known as the wharf is not a substitute for rail transportation, but is an intraplant movement just the same as the handling of cotton from the interior or an uptown warehouse to the railroad car or dray is an intra-plant movement. No allowances may lawfully be made for these intraplant movements.

Concentration and Compression at Interior Points

Texas, Oklahoma, Arkansas and Louisiana comprise the most important cotton-producing area of the United States.

Of the 16,086,000 bales produced in the United States in 1925, these States produced 9,369,000 bales, of which 4,165,000 were grown in Texas, 1,691,000 in Oklahoma, 1,603,000 in Arkansas and 910,000 in Louisiana. Cotton is the most important agricultural commodity produced in these States, the average income from the crop for the three years ending with 1925 being 72 per cent in Texas, 48 per cent in Oklahoma, 69 per cent in Ar*ak*nsas, and 46 per cent in Louisiana of the total income from the products of farms, including livestock. While the cotton production of these States has generally increased for many years, it has varied considerably in different sections due, among other things, to droughts and the ravages of the boll weevil. For example, the production in 1925 in Central Texas, one of the principal cotton-growing sections of that State, was 535,000 bales, while in 1924, and 1923, it was 1,260,000 and 1,300,000 respectively.

The harvesting of cotton in these States generally extends over the months of August to December, inclusive, and about 70 per cent is sold during these months. The rail movement is heaviest during the last three and the first two months of each year, as is likewise the exportation.

[fol. 48] Cotton, after being harvested, is ginned and usually sold by the producer at practically every local station in the cotton-producing section. The buyers assemble or concentrate it at points best suited for the particular merchant's convenience, where facilities are maintained for its merchandising and storage. Merchandising includes grading and arranging in lots of even running grade and staple, sampling and resampling, tagging, marking, patching, reconditioning, rebaling and assembling in shipment lots. It is usually sold by the cotton merchants in multiples of 100 bales of even grade and staple and in order to assemble lots of that size it is necessary to concentrate it. In former years cotton was principally concentrated at a few interior points, such as St. Louis, Mo., and Memphis, Tenn., and at the ports, including New Orleans and Galveston. It was then shipped by the farmer producer, or interior general merchant who frequently financed the growers, to commission merchants or cotton factors at the large markets where it was sold. After the many expenses incident to transportation and merchandising had been de-

ducted, little proceeds were left for the grower. Now the producer usually sells his cotton at his nearest local station, where buyers compete for its purchase, and the producer knows at the time it leaves his hands the price he is to receive. As the interior concentration points increased in number, the facilities for handling the crop, particularly those for storage, greatly improved. It is represented by experienced cotton producers, cotton merchants, and bankers that the concentration of cotton at interior points has been helpful to the growers, merchants handling cotton or general merchandise, and banking institutions, has created many important cotton markets and has promoted the general prosperity of the cotton-producing territory. Concentration has been also of substantial advantage to the carriers as it increases the car loading beyond the transit points, conserves equipment when it is [fol. 48-a] in greatest demand, and thus promotes economy of operation.

At practically all interior concentration points there are located compresses where the ginned bales, with a density of about 11 or 12 pounds per cubic foot, are compressed to a density of about 22.5 pounds per cubic foot. High density compresses are also located at a few interior points where the bales are compressed to a density of about 32 pounds per cubic foot. While the cotton is being transported from the country station to the first billed destination, it is usually stopped at a compress point, in practically all instances the first one reached in route of movement, and compressed. The charge for compression throughout this territory is 18 cents per 100 pounds. This compress charge is absorbed by the rail carrier, except on short-haul traffic where the net rates for transportation would be less than amounts stated in the tariffs, and the compression charge is not absorbed when the rate is 55 cents or less. The rates on flat cotton are, with the exception of those applying intrastate in Texas, 12 cents higher than on cotton compressed by the carriers in transit. The rates on cotton, compressed before delivery to the carriers, are 18 cents less than on cotton compressed at the carrier's expense. On interstate traffic shippers may direct that the cotton be moved flat or that it be compressed in transit, but the carriers reserve the right to determine

the point where the compression shall be had when they bear the expense, and if the shipper requires that the cotton be compressed at a point beyond the first compress in route of movement, the carriers charge the rates applying on flat cotton, and the shipper bears the cost of compression. Intrastate in Texas, the same rates generally apply on flat and compressed cotton, and no penalty is incurred for moving flat cotton past a compress point.

[fol. 49] As previously stated the carriers in this territory, with few exceptions, authorize one concentration in transit without charge. The services rendered by the carriers in the concentration of cotton are generally the same as on other traffic accorded transit. The inbound shipments are switched to the warehouse or compress, notice of arrival is given and inbound freight charges are collected. When the shipments are forwarded to final destination the outbound rates are collected, but subsequently the total charges are adjusted to the basis of the through rates from origins to destinations, plus other charges such as for out-of-line or back-haul services. The services of the carrier in handling cotton for compression are substantially the same as for concentration in so far as the movement into and out of the concentration or compress points is concerned, but, when the cotton is compressed, the compress companies are required to unload and load the cars. When cotton is concentrated at the point where the carrier compresses it, the service rendered by the carrier is materially less than where concentration and compression take place at different points. If the cotton is not concentrated at the compress point, the compression is usually promptly effected and the carload shipments forwarded to the concentration or destination point. If it is concentrated at the compress point, the charges for concentration or merchandising are borne by the shipper and the charge for compression by the carrier. In many instances some of the services of concentration or merchandising for the shipper are performed by the compress company during the time the compression is being effected.

Compression of cotton was first inaugurated at the ports, primarily in the interest of increasing the loading of ships. The charges for such compression at that time were either paid by the water carrier or the rates on such cotton were

[fol. 49a] made sufficiently lower than on gin baled or flat cotton to warrant compression by the shipper. Subsequently, the rail carriers recognized that it was more economical to handle compressed than flat cotton and compresses were located at interior points. In the beginning, the interior compresses were either operated or controlled by the railroads; in some instances they were owned by the railroads and in others by railroad officials. Ultimately, the ownership of the compresses changed and it is testified that those in this territory are now operated by interests in no way associated with or controlled by the railroads or their officials.

The earliest charges for compression at interior points ranged from 10 to 15 cents per 100 pounds and such charges were paid or absorbed by the carriers either directly or through differences in rates. For many years prior to December 1, 1918, the charge for compression in this territory was 10 cents; it was increased on that date under Freight Rate Authority No. 2935 dated November 30, 1918, to 15 cents, on August 26, 1920, to 20 cents, and reduced to 18 cents, the present charge, on July 1, 1922. The compress charges long have been and are now considered as integral parts of the rates on cotton compressed in transit. Under the general increases of June 25, 1918, the rates on cotton were increased 15 cents, which had the effect of increasing the gross rates less wharfage charges of the carriers from Texas common points to the Texas ports for export 28 per cent. In other words, the component of 10 cents for compression, became 12.8 cents, but the entire increase accrued to the carriers until December 1, 1918, when the allowance for compression was increased to 15 cents. This increase in the allowance from 10 to 15 cents was made by the Director General, under whose control the railroads were being operated, upon the recommendation of the Price Fixing Committee of the War Industries Board, and the [fol. 50] Federal Trade Commission, which latter body, at the request of the former, had made an investigation in 1918 of the allowances to and services performed by cotton compress companies. Contemporaneously with the increase in such allowance, the services performed by the compress companies were materially increased. Under the 10-cent allowance, they only unloaded the cotton, compressed it,

marked it on one side, and reloaded it in car lots. If cotton was topped or tiered in loading, additional charges were assessed by the compress companies against the carriers. Under the 15-cent allowance the compress companies were required, among other things, to mark the bales on two sides, insure the cotton while in their possession, load as nearly as possible to 75 bales per car, which necessitated tiering or top loading, and also load so-called city cotton, which for the three years ended with 1925 was about 27 per cent of the total compressed in Texas. The additional services performed by the compress companies under the increased allowance are estimated by a compress operator of many years experience to cost the compress companies from 9 to 12 cents per bale.

The port interests contend that the allowance made by the carriers for compressing the cotton in transit is excessive and should not exceed 60 or 75 cents per bale; that many interior cotton merchants and shippers are stockholders in the interior compress companies, and that the profits from the compression allowance gives to such interior stockholders, merchants and shippers an unreasonable and unlawful advantage over port merchants and shippers and compress companies. They also contend that by reason of the excessive allowances made by the carriers to the interior compress companies, such compress companies can and do render services in connection with concentration of cotton, either free or at less than would be reasonable [fol. 50a] charges, to the prejudice of the merchants and compress companies at the ports.

The interior compress companies are neither owners of nor dealers in cotton. Some interior cotton merchants and also some of the protesting port merchants are stockholders in a number of the interior compress companies. It is not shown, however, that any shipper, whether a stockholder in interior compress companies or not, secures or can secure from such compress companies any favor or advantage in the handling of cotton over any other shipper of cotton handled through the same compresses. The stockholder shipper cannot designate the compress in which he owns stock as the one at which his cotton is to be compressed at the carriers' expense. The right to select the compress rests entirely with the carriers, and it is not suggested here

that any carrier has exercised such right to the advantage or disadvantage of any shipper or compress company. As before stated, if a shipper directs that his cotton be compressed at a point beyond the first compress point in route, rates 12 cents higher than on cotton compressed in transit are assessed and the shipper is also required to bear the charges of compression. It is neither shown nor suggested that any shipper or class of shippers whether stockholders in the interior compress companies or not, are given preferential treatment or service by any interior compress company at times of congestion or scarcity of cars at the compresses. During the three seasons ended with 1924-25, 76 compresses in Texas compressed 9,392,024 bales for the carriers and but 13 per cent of that cotton was owned by stockholders in such compresses and less than one-half of the stockholders' compressed cotton was concentrated at such facilities.

Certain port interests assert that some of the interior compress companies render services in connection with con- [fol. 51] centrated cotton without charge and thereby induce shippers to utilize their facilities to the exclusion of other facilities, including those at the ports. As the interior facilities are owned by many different interests, it cannot be expected that their charges for the various services in connection with the concentration of cotton will be uniform. One of the instances particularly cited by certain port interests in support of their contentions is that a compress company at Greenville, Texas, performs certain merchandising services free. This compress company offers to perform particular services, such as handling, sampling, tagging and marking, for 25 cents per bale, or free at the option of the shipper if the compress company is allowed to retain the loose cotton produced by such operation. Such compress, however, charges 30 cents per bale for "handling" railroad concentrated cotton, and it is believed that some of the particular services of "handling, sampling, tagging and marking" are usually rendered in connection with "handling" railroad concentrated cotton.

The cotton-shipping interests at the ports do not concentrate in transit as large a percentage of their cotton as do the merchants at the interior, and such port interests argue that their rates or total charges should be less than those

paid by the shippers who concentrate most of their cotton in transit. They also argue that as concentration is a valuable service the shippers utilizing it should pay a charge therefor separate from the rate for transportation. The port merchants may and do, under the same general transit provision applying at interior points, concentrate cotton at the ports and ship it to other ports or to interior consuming points at the through rates, but apparently they are willing to forego transit on such traffic if the charges to the interior concentrator can be increased. They show that a charge for [fol. 51a] first concentration is made by the St. Louis-San Francisco and St. Louis-Southwestern in Arkansas, and that such charges of the former were approved by us in Compression, Concentration and Storage of Cotton, 91 I. C. C. 472. The approval of the concentration charge in that case, however, was upon a definite state of facts peculiar to the issues there under consideration which are substantially different from those in this case, and that decision is not controlling here.

The rates and charges of a railroad cannot be based entirely on the cost for each particular character of service rendered. If such was the case, the passenger with baggage would pay more than the passenger without baggage, and the rates to large industrial centers would vary dependent upon the character of terminal service employed, including connecting line switching. Cost of service is an important element but not the only or necessarily the controlling one by which to measure a rate or charge for a particular service. Furthermore, under the theory of the port interests there should be a lower rate on city cotton, because it usually is not concentrated in transit by the carriers, than upon other cotton that is concentrated in transit. Concentration in transit, like compression in transit, unquestionably reduces rather than increases the carriers' expenses of transportation. When concentration takes place at a compression point, there are scarcely any transportation services rendered by the carriers in addition to those rendered in connection with stopping cotton for compression. Interior concentration is an important factor in regulating an even flow of traffic, and may be likened somewhat to a series of reservoirs in supplying an even flow of water for irrigation or other purposes. Without interior concentra-

tion, the cotton crop would have to be shipped during the gathering season which is also the grain-moving season, and [fol. 52] the resultant car shortage in the interior, and congestion at the ports, particularly at the mixed shipment platforms, might seriously disrupt transportation and general business activities throughout the entire cotton-producing section.

In the assembling of cotton at the interior compresses where concentration is authorized, the carriers can and do use many cars otherwise unfit for service. Ordinarily, the length of haul from the originating points to the compress and concentration points is relatively short, and during the peak of the movement the carriers use cattle cars, bad order box cars with leaky roofs, flat cars and sometimes open equipment which could not be used for hauls to the ports or distant destinations.

It does not appear that the giving of free first concentration has operated to the preference or prejudice of any shipper or concentrator of cotton. The record is clear, however, that since the so-called two-rate plan was established, the percentage of cotton concentrated at the interior points of the total handled at such points has steadily decreased, and that certain interior merchants, some of whom have interests, through stock ownership, in interior compress companies, have discontinued concentrating their cotton at points where such compress companies operate facilities and now concentrate it at the ports where they can take advantage of the lower city-delivery rates under which they obtain water-front delivery.

Due to many conditions, such as drought, boll weevil and acreage planted, the production of cotton in territory contiguous to particular compresses is not sufficiently uniform to enable them to operate regularly even during the heaviest [fol. 52-a] portion of the harvest. Intermittent operation unquestionably tends to increase costs.

The interior interests at the request of the port interests submitted considerable data with respect to the cost of operating interior compresses throughout this territory. The average cost per bale for compressing cotton at 115 representative compresses during the three seasons ended with 1924-25, according to these studies, was 72.5 cents for 69 compresses in Texas, 73.6 cents for 15 compresses in Okla-

homa, 90.2 cents for 26 compresses in Arkansas, and 92.6 cents for 5 compresses in Louisiana, the average cost for all during the three seasons being 78.5 cents. The costs varied greatly at the different points. For example, the lowest average cost shown was 55.2 cents at Lubbock, Texas, where an average of about 83,500 bales per annum were compressed, and the highest was $1.80 at Sallisaw, Okla., where an average of 8,423 bales per annum were compressed. In compiling these average costs the interior interests charged against compression all items of expense that would be incurred by the carriers if they performed the compression. The port interests contend that as concentration services are performed at all compress points, certain items of expense charged to compression should be charged to concentration or divided between such services. For example, they argue that the labor costs incident to loading and unloading the cotton should be divided between compression and concentration on the basis of the percentage relationship of the cotton compresses and cotton concentrated to the total handled, which in Texas was 34 per cent concentrated and 66 per cent compressed. In further support of their contention that the allowance for compression is excessive, the port interests show that their average cost of compression at the ports for representative periods was [fol. 53] 51.6 cents per bale. The port compresses charge shippers 60 cents per bale for standard compression and 75 cents per bale for high density compression. The compresses at the ports compress some cotton for the carriers and are given the same allowance as the interior compresses. The substantially lower unit cost of compression at the ports is due part to the fact that the individual compresses at the ports handle on an average many times as much cotton as is ordinarily handled by an individual compress in the interior, and the port facilities undoubtedly operate more regularly and for longer periods than the interior compresses. The interior compresses are required to stand ready at all times, subject to certain limitations not important here, to handle such cotton as the carriers offer for compression.

The port interests state that a proper compression allowance could not be determined from this record, but they contend that the present allowance is excessive. They do

not urge that different compression allowances be made in the different states or at the various compress points in the same state, and there is grave doubt whether it would be practicable or expedient for the carriers to make different allowances at different points, or for one carrier to make an allowance different from that made by other carriers. While the compress allowance was increased 50 per cent December 1, 1918, and such increase appears to be of great concern to certain port interests, the services performed by the compress companies were materially increased at that time. It does not appear that the present compress allowance bears an unreasonable relation to the present freight rates as compared with their relationship prior to June 25, 1918. In view of the small and varying amounts of cotton compressed for the carriers by certain interior compresses, there is little doubt but that, were it not for [fol. 53-a] the fact that such compresses are able to obtain some revenue from concentration, their compress charges would be substantially higher than the allowance now made by the carriers. The record is clear that the cost of compression varies with the amount of cotton compressed and this, to a great extent, accounts for the fact that the port facilities are able to compress cotton for about 60 cents per bale while the interior facilities charge about 90 cents per bale. While the record is not specific as to all the elements of cost of compression at the port facilities, it appears that at least some of such facilities have not included in such costs anything for unloading the cotton from cars and reloading it in cars. This is an important item of cost in the operation of the interior compresses.

The port interests argue, and make an effort to demonstrate by certain cost calculations, that it would be less expensive for the carriers to transport cotton uncompressed than to stop it for compression and bear the cost thereof where the hauls are 325 miles and less. There might be merit in this contention and force in the argument if the final destination of the cotton was always known to the carrier at the time it was offered for transportation. The carriers do not, and cannot, know the final and ultimate destination of the cotton when it is first offered. The longer the haul on flat cotton the more expensive the movement. Therefore, it would be less economical for the carriers to

move the cotton past interior compresses to the port facilities for compression, if it is to be forwarded to some other port for export or to eastern consuming points. New Orleans cotton interests presented this identical question to us in Louisiana Cotton, 46 I. C. C. 451, where at page 454, we said:

The peculiar position of certain short distance points ought not to control the adjustment of rates over a large territory such as here considered, particularly where, as here, most of the cotton moves more than 120 miles.
[fol. 54] The average haul of cotton from Texas to the Texas ports is something over 325 miles, and it is estimated by certain interests that the average haul from this territory to all destinations is approximately 570 miles.

Upon this record we find that the carriers are justified in giving one concentration in transit on cotton without charge and that such concentration without charge does not unduly prefer or unjustly discriminate against any shipper or class of shippers or any compress or warehouse company. We further find that the present allowance for compressing cotton in transit is not shown to be unreasonably high or unjustly discriminatory against or unduly preferential of any shipper or class of shippers or any compress or warehouse company.

An appropriate order will be entered.

HALL, Commissioner, dissenting in part:

For reasons sufficiently indicated in my dissent from the former report, 100 I. C. C. 159, I am unable to join in the conclusions of the majority as to the relation of city-delivery and shipside rates. I concur in the conclusions as to the regulations and practices of respondents pertaining to the concentration and compression of cotton at interior points.

[fol. 54-a] At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 4th Day of April, A. D. 1927

No. 14940

Application of Rates on Cotton to Gulf Ports

No. 13991

Weatherford Crump & Company

v.

Abilene & Southern Railway Company et al.

No. 11965

Galveston Commercial Association, Galveston Cotton Exchange and Board of Trade, and Houston Cotton Exchange and Board of Trade

v.

Alabama & Vicksburg Railway Company et al.

Order

It appearing, That on February 2, 1923, the Commission entered its report and order in No. 11965 and on June 23, 1925, entered its report and order in Nos. 14940 and 13991;

It further appearing, That by order dated December 28, 1925, the Commission reopened the above-entitled proceedings for further hearing;

It further appearing, That full investigation of the matters and things involved has been had and that the Commission has, on the date hereof, made and filed a report on rehearing containing its findings of fact and conclusions thereon, which said report and the reports and orders of February 2, 1923, and June 23, 1925, are hereby referred to and made a part hereof;

[fol. 55] And it further appearing, That the Commission has found in said report on rehearing that the relationship between interstate rates on cotton from points on the lines of respondents and above-named defendants in Oklahoma, Arkansas, Texas, and Louisiana (on and west of the west

bank of the Mississippi River) for city deliveries and shipside deliveries at Galveston, Houston, Texas City, Beaumont and Port Arthur, Texas, and New Orleans, La., including sub-ports of any of said ports, is unduly preferential of warehouses and compresses located on the water front at such ports, and shippers using such facilities, and unduly prejudicial to warehouses and compresses located at interior points and back from the water front at the ports, and shippers using such facilities, and that the undue prejudice and preference should be removed by increasing the present city-delivery rates 1 cent per 100 pounds and reducing the shipside rates, exclusive of wharf or pier terminal charges equivalent to 2 cents per 100 pounds, to the basis of the increased city delivery rates;

It is ordered, That the said orders of February 2, 1923, in No. 11965, and of June 23, 1925, in Nos. 14940 and 13991 be, and they are hereby, modified to the extent necessary to permit of the readjustment of said rates in the manner indicated in said report.

It is further ordered, That respondents in No. 14940, named in appendix hereto, be, and they are hereby, notified and required to cease and desist, on or before June 16, 1927, and thereafter to abstain, from practicing the undue prejudice and preference found in said report to exist.

It is further ordered, That said respondents be, and they are hereby notified and required to establish, on or before June 16, 1927, upon notice to this Commission and to the general public by not less than 10 days' filing and posting [fol. 55-a] in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, in the manner indicated in said report, export and interstate domestic rates, charges, regulations, and practices, which will remove the aforesaid undue prejudice and preference.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF COURT CALLING TO HIS ASSISTANCE A CIRCUIT JUDGE AND A DISTRICT JUDGE—Filed July 2, 1927

Upon consideration of the bill of complaint filed herein wherein an injunction is sought to enjoin, set aside, suspend and annul an order under date of April 4, 1927, in I. C. C. Dockets Nos. 14940 and 13991 of the Interstate Commerce Commission, a commission existing by virtue of an Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce" and the Acts Amendatory thereof and supplementary thereto.

It appearing to the Court that the subject matter involved herein comes within the purview of the Act of Congress of October 22, 1913, Chapter 32, entitled: "An Act making Appropriations to Supply Urgent Deficiencies in Appropriations for the Fiscal Year 1913 and for other purposes," U. S. Compiled Statutes Section 998—wherein it is provided that matters of this nature be heard and determined by three Federal Judges of whom at least one shall be a Circuit Judge.

Now, therefore, I do hereby call to my assistance to hear and determine the application of complainants herein, the Hon. Rufus E. Foster, Circuit Judge and the Honorable Louis H. Burns, District Judge.

J. C. Hutcheson, Jr., Judge U. S. District Court, Southern District of Texas.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

RULE TO SHOW CAUSE—Issued July 2, 1927; Filed July, 9, 1927

The President of the United States of America to United States of America, Greeting:

Whereas on July 1, 1927, an Original Bill of Complaint was filed by Alexander Sprunt & Son, Inc., et al. in the above-entitled and numbered cause, and

Whereas an order was made on said Original Bill of Complaint on July 2, 1927 by the Honorable J. C. Hutcheson, Jr., Judge of the District Court of the United States for the Southern District of Texas, in words and figures as follows:

"7/2/27.

Ordered that rule issue to defendants to appear before the legally constituted court at New Orleans, La., consisting of 3 Judges on Tuesday, July 12th at 10:30 A. M. to show cause why the restraining order and/or the temporary injunction prayed for should not issue.

J. C. Hutcheson, Jr., Judge."

Wherefore you are hereby commanded to appear before said legally constituted Court at New Orleans La., consisting of 3 Judges, on Tuesday July 12, at 10:30 A. M. to show cause why the restraining order and/or the temporary injunction prayed for should not issue.

Herein fail not.

Witness the Honorable J. C. Hutcheson, Jr., Judge of said Court and the Seal of the District Court of the United States for the Southern District of Texas, at Houston, this 2nd day of July A. D. 1927.

L. C. Masterson, Clerk, by S. F. Cunningham, Deputy.
(Seal.)

[File endorsement omitted.]

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR PERMISSION TO INTERVENE—Arkansas Cotton Trade Association et al.; filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

These petitioners, Arkansas Cotton Trade Association, a corporation under the laws of Arkansas, engaged as a trading association of cotton dealers in the State of Arkansas, of which H. M. Bennett is President and W. S.

Turner is Secretary and Treasurer, H. M. Bennett being a resident of the County of Pulaski, State of Arkansas; and the Texas-Oklahoma Compress Association, an association composed of cotton compresses and warehouses in the States of Texas and Oklahoma, of which C. H. Thompson, of Lamar County, Texas is President, complaining of Alexander, Sprunt & Son, Inc., Anderson, Clayton & Company, a joint stock association; Houston Compress Company, a Texas corporation with its principal office and place of business in Harris County, Texas; Ship Channel Compress Company, a corporation with its principal office and place of business in Harris County, Texas; Texas Farm Bureau Cotton Association, a co-operative marketing association organized under the laws of the State of Texas, with its principal office and place of business at Dallas, Dallas County, Texas; Turning Basin Compress Company a corporation with its principal office and place of business at Houston, Harris County, Texas; and Weatherford Crump & Company, a Texas corporation with its principal office and place of business at Houston, Harris County, Texas; plaintiffs in the above cause, would show unto your Honors that [fol. 59] the plaintiffs did on the 1st day of July A. D. 1927, file their bill in this cause wherein they complained of an order of the Interstate Commerce Commission, issued April 4th, 1927, in Cause No. 14940, before the said Interstate Commerce Commission by virtue of which order said Interstate Commerce Commission found that discrimination and undue preference existed in the freight rate adjustment of cotton to Gulf Ports in the States of Texas and Louisiana, and by virtue of which order the said discrimination was removed.

That on the — day of July A. D. 1927, the defendant The United States of America, filed its answer in this cause; that your petitioners herein claim and assert an interest in this litigation in that if the relief prayed for by the plaintiffs herein, should be granted, there would be an unreasonable and undue delay in the receiving by these petitioners of the relief and benefit to which they are entitled by virtue of the said order of the said Interstate Commerce Commission, which would result in an undue preference and undue discrimination as against these petitioners in favor of the plaintiffs herein with regard to freight rates on cotton

from points in Texas, Oklahoma, Arkansas and Louisiana to the gulf ports in Texas and Louisiana.

Your petitioners show that by virtue of the said order of the said Interstate Commerce Commission above referred to, the undue discrimination and undue preferences which existed as against them in favor of the plaintiffs herein were removed and that in the event said order is suspended or its enforcement enjoined, that these petitioners will be subjected to the enforcement of freight rates on cotton, from points in Texas, Louisiana, Oklahoma and Arkansas to Gulf Ports in Texas and Louisiana, which will be highly discriminatory and preferential as against these petitioners and in favor of plaintiffs in this cause to the great detriment and damage of these intervenors.

Wherefore your petitioners pray the most gracious permission of this Honorable Court, that they be allowed to file an intervention in this cause and that the above mentioned order of the Interstate Commerce Commission be in no way interfered with, set aside, annulled, suspended [fol. 60] or its enforcement in any way affected by this Honorable Court. Your petitioners further — for such other and further relief as may be proper in the premises.

A. L. Reed, Solicitor for Petitioners.

Address: Callaway & Reed, 1908 Santa Fe Building, Dallas, Texas.

[File endorsement omitted.]

[fol. 61] In United States District Court

[Title omitted]

Application of Oklahoma State Cotton Exchange for Leave to Intervene—Filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

This petitioner, Oklahoma State Cotton Exchange, a corporation organized and existing under and by virtue of the laws of the state of Oklahoma, with its domicile in the State of Oklahoma, complaining of Alexander, Sprunt & Son,

Inc.; Anderson, Clayton & Company, a joint stock association; Houston Compress Company a Texas corporation with its principal office and place of business in Harris County Texas; Ship Channel Compress Company, a corporation with its principal office and place of business in Harris County, Texas; Texas Farm Bureau Cotton Association, a co-operative marketing association organized under the laws of the State of Texas, with its principal office and place of business at Dallas, Dallas County, Texas; Turning Basin Compress Company, a corporation with its principal office and place of business at Houston, Harris County, Texas, and Weatherford Crump & Company, a Texas corporation with its principal office and place of business at Houston Harris County, Texas; plaintiffs in the above cause, would respectfully show unto your Honors that the plaintiffs did, on the 1st day of July A. D. 1927, file their bill of complaint in this cause wherein they complained of an order of the Interstate Commerce Commission, issued April 4th 1927, in Cause No. 14940, before the [fol. 62] said Interstate Commerce Commission by virtue of which order said Interstate Commerce Commission found that discrimination and undue preference existed in the freight rate adjustment on cotton from Oklahoma and other states to Gulf Ports in the States of Texas and Louisiana and by virtue of which order the said discrimination was removed, as more fully appears from the order of the Commission and referred to in Bill of Complaint filed by the plaintiffs in this cause; that on the — day of July A. D. 1927, the defendant, the United States of America filed its answer in this cause; that your petitioner herein claims and asserts an interest in this litigation in that, if the relief prayed for by the plaintiffs herein should be granted, this petitioner and its members would be deprived of the relief and benefit to which it and its members are entitled by virtue of the said order of the said Interstate Commerce Commission, and the delay would result in an undue preference and undue discrimination as against this petitioner and its members in favor of certain cotton shippers and warehouses at the gulf ports in the States of Texas and Louisiana with regard to freight rates on cotton from points in Oklahoma, Texas, Arkansas and Louisiana to the gulf ports in Texas and Louisiana.

Your petitioner shows that by virtue of the said order of the said Interstate Commerce Commission above referred to, the undue discrimination and undue preference which existed as against them in favor of such other cotton shippers and warehouses at the gulf ports in the states of Texas and Louisiana were removed and that in the event said order is suspended or its enforcement enjoined, that this petitioner will be subjected to the enforcement of freight rates on cotton from points in Oklahoma, Texas, Arkansas, and Louisiana, which will be highly discriminatory and preferential as against this petitioner and in favor of such other cotton shippers and warehouses at the gulf ports in Texas and Louisiana.

Wherefore your petitioner prays the most gracious permission of this Honorable Court, that it be allowed to file an Intervention in this cause and that the above mentioned order of the Interstate Commerce Commission be [fol. 63] in no way interfered with, set aside, annulled, suspended or its enforcement in any way affected by this Honorable Court. Your petitioner further prays for such other and further relief as may be proper in the premises.

Charles B. Cochran, Solicitor for Petitioner, Oklahoma State Cotton Exchange.

[File endorsement omitted.]

[fols. 64 & 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING PERMISSION TO ARKANSAS COTTON TRADE ASSOCIATION, TEXAS-OKLAHOMA COMPRESS ASSOCIATION, AND OKLA. STATE COTTON EXCHANGE TO INTERVENE—Filed July 11, 1927

This cause coming on to be heard on the application of Arkansas Cotton Trade Association, Texas Compress Association and the Oklahoma State Cotton Exchange, intervenors in this cause, to be made parties defendant, and the petition having been duly considered and it appearing to the court that the said petitioners were parties of record

before the Interstate Commerce Commission in the cause before said commission involving the matter now before this court, and that said petitioners are interested in the cause now pending in this court, and that the rights of said petitioners will be affected by the matter or matters involved in this cause;

It is therefore ordered, adjudged, and decreed that said Arkansas Cotton Trade Association, Texas Compress Association and the Oklahoma State Cotton Exchange, petitioners have leave to intervene in said cause and to that end may appear in said cause within one day from the date of this order in the same manner and with like effect as if named in the original bill as parties defendant.

This order to be without prejudice to any proceedings heretofore had in this cause.

J. C. Hutcheson, Jr., Judge.

[File endorsement omitted.]

[fol. 66] In United States District Court

[Title omitted]

Petition in Intervention of Arkansas Cotton Trade Association and Texas Oklahoma Compress Association—Filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

Now come Arkansas Cotton Trade Association, a Corporation organized under the laws of the State of Arkansas and engaged as a trading association of cotton dealers in the state of Arkansas, of which H. M. Bennett is president, and W. S. Turner is secretary and treasurer, H. M. Bennett being a resident of the County of Pulaski, State of Arkansas, and W. S. Turner being a resident of the County of Pulaski, State of Arkansas, and the Texas-Oklahoma Compress Association an association composed of cotton compresses and warehouses in the states of Texas and Oklahoma, of which C. H. Thompson of Lamar County, Texas, is president, and with leave of this Honorable Court

first being had and obtained, and with the permission of this Honorable Court, file this their petition of intervention, complaining of Alexander Sprunt & Son, in*d*., Anderson Clayton & Company; Houston Compress Company; Ship Channel Compress Company; Texas Farm Bureau Cotton Association; Turning Basin Compress Company; and Weatherford Crump & Company plaintiffs in the above cause; and would respectfully show unto this Honorable Court as follows:

I

That heretofore towit, on or about the 1st day of July A. D. 1927 there was filed in this Honorable Court against the United States of America by the parties hereinabove mentioned that certain complaint entitled Alexander, Sprunt & Son, Inc., et al. versus United States of America, wherein the plaintiffs complained of an order of the In-
[fol. 67] terstate Commerce Commission issued April 4th, A. D. 1927, in cause No. 14940 by the Interstate Commerce Commission, by virtue of which order said Interstate Commerce Commission found that a discrimination and undue preference existed in the freight rate adjustment on cotton to Gulf Ports in the States of Texas and Louisiana, and by virtue of which order the said discrimination and undue preference was removed;

II

Your petitioners further show that said order grew out of an investigation made by the Interstate Commerce Commission with regard to the freight rates on cotton from interior points in the states of Texas, Arkansas, Oklahoma and Louisiana to Gulf ports in the States of Texas and Louisiana and that to such hearing or hearings these petitioners were parties as well as approximately two hundred and twenty-six other parties consisting of municipalities, corporations, firms and individuals in the states of Texas, Arkansas, Oklahoma and Louisiana, and that all of such parties had a material interest in such investigation and in any orders that might be issued by the Interstate Commerce Commission as a result thereof, for the reason that an unjust discrimination and preference existed in favor

of the plaintiffs in the original Bill of Complaint in this cause as against your petitioners in this intervention, whereby the unjust and preferential freight rates were enjoyed by such plaintiffs as against your petitioners herein;

III

Your petitioners further respectfully show that the order of the Interstate Commerce Commission hereinabove mentioned was issued by said Commission after proper hearing and after lengthy investigation and the persentation to said Commission of a great mass of evidence with regard to the matters involved in the investigation, at which hearing and hearings the plaintiffs in this cause were given full opportunity properly to present their cause and to protect their interests; and your petitioners further show that said order was a legal, proper and just order is- [fol. 68] sued under the proper authority of the said Interstate Commerce Commission.

III-A

Petitioners neither admit or deny paragraphs I to VI, inclusive, of plaintiff's bill of complaint, but assert that the document, pleadings and orders referred to therein are the best evidence as to the issues and requirements thereof.

III-B

Petitioners deny in its entirety plaintiff's allegations in paragraph VII that there are additional services rendered on export traffic not required on local or domestic traffic. Petitioners deny statements and allegations in paragraph VII of plaintiff's bill that the re-opened case did not take into consideration, in addition to the question of discrimination and preference, the question of what rate was necessary to remove said discrimination and preference, but assert that the Commission did undertake in said investigation in a lawful and proper manner to determine what rate was necessary to remove the unjust discrimination and undue preference and advantage previously found to exist. Petitioners neither admit nor deny the other statements contained in paragraph VII of plaintiffs' bill with

regard to the various pleadings before the Commission, decisions of the Commission and the various orders and notices issued by the Commission.

Petitioners assert that these pleadings, decisions, orders and notices are the best evidence of their contents.

III-C

Petitioners deny that the handling by the carriers of export cotton and shipside delivery cotton involves any greater service on the part of the transportation lines than said service rendered by said transportation lines in the handling of domestic cotton to shipside facilities (as alleged in paragraph VII of plaintiff's bill).

Petitioners assert that the undisputed testimony of record before the Commission shows that in truth and in fact the transportation service rendered by the carriers and the cost of handling cotton for export and shipside delivery is materially less than the cost of handling domestic cot-
[fol. 69] ton to shipside facilities located at the various gulf ports in Louisiana and Texas. Petitioners assert that regardless of this undisputed testimony the record further shows that the carriers are exacting and collecting higher rates on the export cotton and shipside delivery cotton than on the domestic cotton delivered to shipside facilities.

Petitioners further assert that there is no warrant in fact or in truth for the allegation contained in paragraph VII, page 20 of plaintiffs' bill to the effect that the undisputed testimony shows that additional transportation services and transportation services of a different character are rendered on shipments of export cotton. Petitioners further assert that in fact and in truth the transportation services rendered are of an identical character, but are substantially less on export and shipside cotton than on domestic cotton delivered to shipside facilities.

All allegations in paragraph VII, pages 21, 22, 23, and 24 of plaintiffs bill are denied in their entirety as being a correct statement as to the facts in connection with the handling of cotton at the various facilities located at the various gulf ports in Texas and Louisiana.

III-D

Petitioners deny in its entirety all allegations contained in paragraph XI of plaintiff's bill. Petitioners deny that the Commission refused and denied the benefit of a transit privilege to plaintiffs. On the contrary petitioners assert that the Commission's order on its face shows that these plaintiffs have been accorded the same transit privileges as are accorded all other cotton shippers.

Petitioners deny that plaintiffs have not been accorded a full and complete hearing, and that the Commission's orders were in any way made without competent evidence. Petitioners assert that plaintiffs have been accorded every opportunity to present facts to the Commission and that the Commission's findings and orders are based upon a comprehensive and complete record.

III-E

Petitioners deny all allegations contained in paragraph [fol. 70] XII of plaintiffs' bill and assert that the carriers who were defendants or respondents in the cause before the Commission did not introduce evidence which in any manner showed or appeared to show that export shipments of cotton involved additional and different services from those rendered on local and domestic shipments of cotton delivered to shipside facilities. Petitioners assert that the carriers' evidence showed and established quite the contrary.

III-F

Petitioners assert that the allegation contained in paragraph XIII of plaintiffs' bill are incorrect and petitioners deny each and every allegation therein contained. Petitioners assert that the Commission did not find "that it was not illegal to apply local delivery rates to such shipments." The Commission on the contrary found as shown by Exhibit "E" of plaintiffs' bill that "the collection of interstate domestic rates on cotton delivered to waterfront warehouses or compresses at Houston and Galveston is not in our judgment illegal." Interstate domestic rates as used by the Commission do not include all local delivery rates, but include only such local delivery rates as are on file with the Commission.

III-G

Petitioners deny as stated in paragraph XIV of plaintiffs' bill that the Commission's finding of undue prejudice was not supported by the evidence. Petitioners further deny that the Commission's finding in any way deprives plaintiffs of any lawful advantage, natural or geographical, accruing to plaintiffs.

III-H

Petitioners deny all allegations in paragraphs XV and XVI of plaintiffs' bill, and assert that the Commission's findings are amply supported by the evidence.

III-I

Petitioners deny all allegations contained in paragraphs XVII and XVIII of plaintiffs' bill and assert that the Commission's findings were in accordance with the issues and based upon the evidence.

[fol. 71] III-J

Petitioners deny all allegations contained in paragraph XIX of Plaintiffs' bill and assert that the Commission's findings were based upon the evidence and in accordance with the issues. Petitioners deny that the Commission has in any way declined or refused to establish for plaintiffs the same transit privileges and the identical allowances as have been established and approved for all other cotton shippers.

Petitioners further deny that plaintiffs have in any way been deprived of their property without due process of law.

III-K

Petitioners deny that the services rendered by the carriers, as stated in paragraph XX of plaintiffs' bill, on export cotton are greater than the services rendered on local delivery cotton.

III-L

Petitioners deny allegations contained in paragraph XXI of the plaintiffs' bill and assert that no farmer will be in-

jured by the *the* Commission's order, but assert on the contrary that farmers will be benefited by said order.

III-M

Petitioners deny all allegations contained in paragraph XXII of plaintiffs' bill and assert that the intraplant service of moving cotton within the shipside facilities is in no way similar to the transportation service of switching cotton within the railroad terminals at the gulf ports.

III-N

Petitioners deny allegations in paragraph XXIII of plaintiffs' bill and assert that plaintiffs have had full opportunity to be heard.

III-O

Petitioners deny any and all allegations contained in paragraphs XXIV to XXX, inclusive of plaintiffs' bill.

III-P

Petitioners deny allegations contained in paragraph XXXI of plaintiffs' bill, and assert that the transportation service performed in the handling of export cotton and ship-
[fol. 72] side cotton is like and contemporaneous with the transportation service rendered in the handling of local and domestic cotton.

III-Q

Petitioners deny any and all allegations contained in paragraphs XXXII to XXXV, inclusive of plaintiffs' bill and assert that plaintiffs are without equity in the premises.

IV

Your petitioners further show that the effect of said order is and will be to remove the unjust discrimination and preference enjoyed by the plaintiffs above mentioned as against these petitioners, and that in the event said order of the Interstate Commerce Commission should be suspended, enjoined or the enforcement of same in any way delayed by this Honorable Court the result thereof would be an in-

evitable, burdensome and unjust delay as against these petitioners, depriving them of the benefits to which they are entitled by virtue of said order, and that any such suspension or injunction delaying the going into effect of said order by this Honorable Court would result in unjust discrimination and preference as against these petitioners in favor of the plaintiffs above mentioned.

V

Your petitioners further show that their members are engaged in active competition in the buying, selling and distributing of cotton with the above mentioned plaintiffs, that heretofore said plaintiffs have enjoyed an unjust and undue preference and advantage over petitioners members because of the conditions existing with regard to the freight rates on cotton from interior points in Texas, Louisiana, Arkansas and Oklahoma to Gulf Ports in Texas and Louisiana and that if the above mentioned order of the Interstate Commerce Commission should be suspended, enjoined or its enforcement in any way delayed by order of this Honorable Court the undue discrimination and unjust prefer- [fol. 73] ence heretofore enjoyed by the plaintiffs above mentioned as against petitioners' members would be continued to the great damage of petitioners' members and that same would work an irreparable injury upon petitioners' members.

VI

Your petitioners further show that they have requested permission to intervene and do hereby intervene in this cause by virtue of the Acts of Congress of June 18th, 1910, Paragraph 5, 36 Stat. 543, Acts of March 3rd, 1911, Chapter 231, Paragraph 212, 36 Stat. 1150 and the laws of the United States of America whereby the right and authority is granted to these petitioners for such intervention.

Wherefore these petitioners respectfully pray that notice be given to the parties to this cause of this intervention and that upon hearing of this cause said order of the Interstate Commerce Commission be in no way suspended, enjoined or its enforcement in any way affected by this Honorable Court.

Your petitioners further pray for such other and further relief as may be proper in the premises.

Respectfully submitted.

A. L. Reed, Solicitor for Petitioners.

[File endorsement omitted.]

Duly sworn to by J. K. Moore. Jurat omitted in printing.

[fol. 74] In United States District Court

[Title omitted]

Petition in Intervention of Oklahoma State Cotton Exchange—Filed July 11, 1927

To the Honorable the Judges of the District Court of the United States for the Southern District of Texas:

Comes now, The Oklahoma State Cotton Exchange, a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, and with its domicile in Oklahoma City, Oklahoma, with leave of this honorable court, intervenes herein and complaining of Alexander Sprunt & Son, Inc., Anderson Clayton & Co., a joint stock association, Houston Compress Company, a Texas corporation, Ship Channel Compress Co., a corporation, Texas Farm Bureau Cotton Association, a co-operative marketing association, Turning Basin Compress Co., a corporation and Weatherford Crump & Co., a corporation, and in answer to the bill of complaint filed by said plaintiffs in the above cause would respectfully show unto this honorable court, as follows:

1

That heretofore towit, on or about the 1st day of July 1927, there was filed in this honorable court against the United States of America by the above named plaintiffs, a certain complaint wherein the plaintiffs complain of an order of the Interstate Commerce Commission, issued April 4th, 1927, in Cause No. 14940, by the Interstate Commerce Commission, by virtue of which order said Interstate Com-

merce Commission found that discrimination and undue preference existed in the freight rate adjustment on cotton to gulf ports in the States of Texas and Louisiana and by virtue of which order the said discrimination and undue preference was removed.

2

Your intervenor further shows that said order grew out [fol. 75] of an investigation made by the Interstate Commerce Commission with regard to the freight rates on cotton from interior points in the States of Texas, Arkansas, Oklahoma and Louisiana to gulf ports in the states of Louisiana and Texas, and that this intervenor, as well as approximately two hundred and sixty two other parties, consisting of municipalities, corporations, firms and individuals in the States of Texas, Arkansas and Louisiana, was a party to said investigation and participated in said proceedings. This intervenor had a material interest in such investigation and in any orders which might be issued by the Interstate Commerce Commission as a result thereof, for the reason that unjust discrimination and preference existed in favor of certain cotton shippers and warehouses located at gulf ports in Houston, Texas, and New Orleans, La., whereby unjust and preferential freight rates were enjoyed by such other cotton shippers and warehouses as against the intervenor herein and its various members.

3

Your intervenor shows that the order of the Interstate Commerce Commission hereinabove mentioned was issued by said Commission after due and legal notice and hearing and after lengthy investigation in which there was presented to said Commission a great mass of evidence with regard to the matters involved in the investigation. In this investigation the plaintiffs in this cause were given full opportunity properly to present their cause and to protect their interests; and your intervenor further shows that said order was legally proper and a just order and issued under the proper*ty* authority of the said Interstate Com-

merce Commission; and that said order and each finding made by the Interstate Commerce Commission were and are supported by ample evidence.

4

Your intervenor further shows that the effect of said order is and will be to remove the unjust discrimination and preference enjoyed by certain cotton shippers and warehouses at the Gulf ports in the States of Texas and Louisiana as against this intervenor; and in the event said [fol. 76] order of the Interstate Commerce Commission should be suspended enjoined or the enforcement of same in any way delayed by this honorable Court, the result thereof would be inevitable, burdensome and unjust delay, and would deprive this intervenor of the benefits to which it is entitled; and that a suspension of such order, which would delay the effective date of said order, would result in further unjust discrimination and preference against this intervenor in favor of such cotton shippers and warehouses above mentioned.

5

Your intervenor further shows that the cotton shippers of Oklahoma, members of the Oklahoma State Cotton Exchange, are engaged in the active competition in the buying, selling and distribution of cotton with the above mentioned cotton shippers at the Gulf ports in the States of Texas and Louisiana; that heretofore certain of said shippers located at the Gulf ports in said States have enjoyed an unjust and undue preference and advantage over them, because of the conditions existing with regard to the freight rates on cotton from interior points in the States of Texas, Louisiana, Arkansas and *Louisiana,* and if the above mentioned order of the Interstate Commerce Commission should be suspended, enjoined or its enforcement in any way delayed by order of this honorable Court, the undue discrimination and unjust preference heretofore enjoyed by such other cotton shippers will be continued to the great damage of this intervenor and its members, and would work an irreparable injury to them.

Your intervenor denies that the order of the Corporation Commission denies to the plaintiffs the benefit of any transmit privileges at their facilities on shipments which are later moved to steamer berths, denies that said order creates an undue preference and denies that there is no competent evidence upon which to base the finding and order of the Corporation Commission, adjusting the rates to the various concentrators using port facilities and interior facilities other than those located at compress points; denies [fol. 77] that the said order will deprive the plaintiffs of their property without just compensation without a full hearing and consideration.

Intervenor denies that the evidence introduced before the Interstate Commerce Commission showed that export shipments of cotton involved additional and different services from those being rendered to local shipments of cotton.

Intervenor denies that the finding and order of the Commission that the two rate plan gave to the warehouses and shippers using the warehouses owned by the plaintiffs an unnatural and unlawful preference over uptown and interior warehouses and shippers and subjected such uptown and interior warehouses and shippers to an unnatural and unlawful disadvantage, were unwarranted by the evidence and not supported by substantial evidence.

Intervenor denies that the order of the Commission was made for the purpose of compelling the carriers to bring about an equalization of commercial advantages and commercial conditions which are beyond the jurisdiction and power of the Commission; and this intervenor alleges and states that the order of the Commission does not deprive the plaintiffs of any natural, geographical or commercial advantage to which they are legally entitled.

Intervenor further denies that the rate fixed by the order of the Corporation Commission was without warrant in the issues, or without support in the evidence.

Intervenor denies that the orders of the Commission places the plaintiffs at a net penalty or disadvantage in competition with other warehouses, or deprives them of their property without due process; and denies that the order of the Commission deprives the plaintiffs of any

transportation privilege accorded to other shippers, or deprives the plaintiffs of any advantage which they may have by reason of more advantageous natural or geographical location.

Intervenor denies that the order of the Commission authorizes the carriers to absorb costs for services performed by the carriers for certain shippers and prohibits such allowances on similar services performed for the plaintiffs; [fol. 78] and denies that the order deprives the plaintiffs of the benefit of the location of their warehouses and facilities, constructed for the purpose of handling shipments or that the order authorizes preferential services to be performed by competitors of plaintiffs.

Intervenor denies that the order of the Commission, or any portion thereof is void because of lack of evidence to support the same, and specifically avers that each finding of the Commission is supported by sufficient evidence.

Wherefore this Intervenor respectfully prays that upon the hearing of this cause, the order of the Interstate Commerce Commission shall be in no way suspended or enjoined; and that plaintiffs complaint be dismissed, and for such other and further relief as may be proper in the premises.

Charles B. Cochran, Solicitor for Intervenor Oklahoma State Cotton Exchange.

[File endorsement omitted.]

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed July 12, 1927

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel in the above entitled suit.

P. J. Farrell, J. Stanley Payne.

[fol. 80] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed July 12, 1927

The Interstate Commerce Commission, intervening defendant in the above entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraphs I to V inclusive of the bill of complaint, the Commission admits for the purposes of this suit, that the allegations therein contained are true.

II

Answering Paragraphs VI to XXXV, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated June 23, 1925, referred to in paragraph VII, and the report and order dated April 4, 1927, referred to in paragraph VIIII, copies of which, except as to appearances and lists of parties as stated in said paragraphs, are attached to and made a part of the bill of complaint as Exhibits B and E; that said reports and orders were made and entered in a consolidated proceeding before the Commission covered by the Commission's dockets numbered 13991 and 14940; that the Commission refers the court to the text of said reports and orders 100 I. C. C. 159 and 123 I. C. C. 685 for full, com-[fol. 81] plete and accurate information concerning the contents of said reports and orders and for a description of the proceedings before the Commission upon which the reports and orders were and are based; that in said con-

solidated proceeding the plaintiffs were, and each of them was, accorded the full hearing provided for in the Interstate Commerce Act; that at hearings in said consolidated proceeding a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said consolidated proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of plaintiffs by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said consolidated proceeding the aforesaid reports and orders of June 23 and April 4; that said reports and orders included the Commission's findings of fact, decisions, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is fully supported and justified by the evidence submitted to the Commission in said consolidated proceeding as aforesaid.

The Commission further alleges that, in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said consolidated proceeding by their counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that neither of said orders of June 23 and April 4 was made or entered either [fol. 82] arbitrarily or unjustly or contrary to the relevant evidence, or without evidence to support it; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III

Further answering Paragraphs XIV to XXXV, inclusive of the bill of complaint, the Commission denies that said orders of June 23 and April 4, are or that either of said orders, is either unlawful or void, for the reasons or for any of the reasons, set forth in said paragraphs.

The Commission particularly denies that the plaintiffs, and also denies that any of the plaintiffs, will suffer either irreparable damage or irreparable injury, as stated in paragraphs XXXIV and XXXV of the bill of complaint, unless said orders of June 23 and April 4 are enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and orders of June 23, 1925 and April 4, 1927, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. P. J. Farrell, of Counsel.

[fol. 83] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed July 12, 1927

Now into Court comes the United States of America, made defendant herein, through Wayne G. Borah, United States Attorney and T. M. Logan Bruns, Assistant United States Attorney, for the Eastern District of Louisiana, duly authorized and for answer to the bill of complaint

filed against it in the above entitled cause, with respect says:

I

Respondent, on information and belief, admits article one of plaintiff's petition.

II

Respondent, on information and belief, admits article two of plaintiff's petition.

III

Respondent, on information and belief, admits article three of plaintiff's petition.

IV

For lack of sufficient knowledge on which to base a belief respondent denies article four of plaintiff's petition.

V

Respondent admits article five of plaintiff's petition.

VI

[fol. 84] Respondent admits article six of plaintiff's petition.

VII

Respondent neither admits nor denies article seven of plaintiff's petition and in so far as the same may become material upon the hearing it will require strict proof thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety, a part hereof.

VIII

Respondent neither admits nor denies article eight of plaintiff's petition and in so far as the same may become material upon the hearing, it will require strict proof

thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety, a part hereof.

IX

Respondent finds no article nine contained in plaintiff's bill of complaint.

X

Respondent neither admits nor denies article ten of plaintiff's petition and in so far as the same may become material upon the hearing it will require strict proof thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety, a part hereof; and where in said article refers to the testimony before the Commission and particularly that part thereof relating to the difference in character of the services rendered to shipments of export cotton from those rendered domestic or local delivery cotton your respondent refers to said testimony in toto, and the findings of the Commission thereon which appear in Exhibits "B" and "E" of plaintiff's bill of complaint at pages 58, 59 and 78.

XI

Respondent neither admits nor denies the first paragraph [fol. 85] of article eleven of plaintiff's petition and in so far as the same may become material upon the hearing it will require strict proof thereof, and in so far as the decisions and orders of the Interstate Commerce Commission are referred to in said article your respondent for greater certainty makes said decisions and orders, in their entirety a part hereof.

As to the Commission's findings referred to in article eleven respondent states the fact to be that they are to be found not in Exhibit "B" of plaintiff's petition but in Exhibit "E" under the headings "Concentration and Compression at Interior Points" page 89 and respondent makes said decision in its entirety a part hereof, and further answering said article your respondent specifically

denies the last paragraph thereof commencing with the words "Notwithstanding the foregoing finding."

XII

In so far as article twelve of plaintiff's petition may be taken to state facts contrary to the Commission's findings it is denied.

XIII

Respondent admits subject to verifications and reference to the Commission's findings in its entirety, article thirteen of plaintiff's petition.

XIV

As to the findings and orders of the Commission referred to in article fourteen of plaintiff's petition respondent refers to them in toto, appearing as Exhibits "B" and "E" of plaintiff's petition and your respondent specifically denies that said decisions and orders of the Commission are unwarranted or unsupported by the evidence and further denies the other allegations and conclusions set forth in said article.

XV

Respondent denies article fifteen of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XVI

Respondent denies article sixteen of plaintiff's petition [fol. 86] and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XVII

Respondent denies article seventeen of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XVIII

Respondent denies article eighteen of plaintiff's petition.

XIX

Respondent denies article nineteen of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XX

Respondent denies article twenty of plaintiff's petition and for further answer thereto refers to the decisions and orders of the Commission appearing as Exhibits "B" and "E" of plaintiff's petition.

XXI

Respondent neither admits nor denies the purposes for which the Texas Farm Bureau Cotton Association exists and in so far as they may become material upon the hearing it will require strict proof thereof, and your respondent denies the other allegations contained in article twenty-one of plaintiff's petition.

XXII

Respondent requires strict proof of any of the allegations contained in article twenty-two that may become material upon the hearing and specifically desires the conclusion therein stated that the action of the Commission is arbitrary and void.

XXIII

Respondent denies article twenty-three of plaintiff's petition.

XXIV

Respondent denies article twenty-four of plaintiff's petition.

XXV

Respondent denies that the order of the Commission is null and void and states that the Commission recognized [fol. 87] the legitimate advantages of petitioner's loca-

tions, as appears from its decisions, Exhibits "B" and "E," pages 60 and 84.

XXVI

Respondent denies article twenty-six of plaintiff's petition.

XXVII

Respondent denies article twenty-seven of plaintiff's petition and for the findings of the Commission as to the "reasonableness of existing rates" refers to Exhibits "B" and "E" of plaintiff's petition, particularly pages 62 and 64.

XXVIII

Respondent denies article twenty-eight of plaintiff's petition.

XXIX

Respondent denies article twenty-nine of plaintiff's petition.

XXX

Respondent denies article thirty of plaintiff's petition.

XXXI

Respondent denies that the order of the Commission is void and for further answer thereto refers to the said decisions and orders appearing as Exhibits "B" and "E" of plaintiff's petition.

XXXII

Respondent neither admits nor denies article thirty-two of plaintiff's petition and in so far as same may become material upon the hearing it will require strict proof thereof, and for further answer thereto respondent states that hearings of the Commission were carried on jointly with the Railroad Commission of Texas and the Public Service Commission of Louisiana as appears from Exhibits "B" and "E," pages 56 and 74.

XXXIII

Respondent denies article thirty-three of plaintiff's petition.

XXXIV

Article thirty-four is argumentative and speculative and respondent is not required to answer the same, but if upon the hearing any allegation or part thereof becomes material respondent will require strict proof thereof.

[fol. 88]

XXXV

Respondent admits, subject to verification, that said order of the Commission complained of by petitioners will become effective on July 16, 1927.

XXXVI

And further answering plaintiff's petition respondent alleges that the matters and things set forth in the bill of complaint and sought to be put in issue before the Court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act and that the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

Respondent alleges that the facts set forth in the reports of the Commission and each and all of the same are true and correct and,

It specifically denies—

(a) Any fact or facts alleged in the bill of complaint or any part of the same, which deny or which seek to deny any fact or facts found by the Commission.

(b) Any fact or facts alleged in the bill of complaint or any part of the same, which are inconsistent with any fact or facts found by the Commission.

(c) Any and all inferences of fact from any particular fact or facts alleged in the bill of complaint, or any part of the same, which seek to deny, or which are inconsistent with any fact or facts found by the Commission.

(d) Any fact or facts alleged in the bill of complaint or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission.

(e) Any fact or facts alleged in the bill of complaint or any part of the same, which attack or which seek to attack the order of the Commission and to show facts other than those found by the Commission.

(f) Any allegation in the bill of complaint or any part of the same, which allege that facts were found by the Commission in its reports which, as shown on the face thereof, were not so found.

(g) Any conclusions of law alleged and insisted upon in the bill of complaint, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission.

(h) Each and every allegation in the bill of complaint contained not herein specifically admitted or denied.

[fol. 89] Wherefore, having fully answered, respondent prays that the bill of complaint be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Wayne G. Borah, United States Attorney. T. M. Logan Bruns, Assistant U. S. Attorney.

Duly sworn to by T. M. Logan Bruns. Jurat omitted in printing.

[fol. 90] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERVENTION OF GALVESTON COTTON EXCHANGE AND BOARD OF TRADE & GALVESTON CHAMBER OF COMMERCE—Filed July 12, 1927

To the Honorable Judges of the District Court of the United States for the Southern District of Texas:

Comes now the Galveston Chamber of Commerce a corporation duly incorporated under the laws of the State of Texas, and having its principal office at Galveston, Texas, of which L. W. Reed is president and E. H. Thornton, Traffic Manager and the Galveston Cotton Exchange and Board of Trade, a corporation, duly incorporated under the laws of

the State of Texas, and having its principal office at Galveston, Texas of which Karl Tidemann is President, and G. H. Brown is Secretary, and pray the Court to be permitted to intervene in the above numbered and entitled cause, wherein Alexander Sprunt & Son, Inc. et al., are Complainants, against the United States of America as Respondent, being a Bill in Equity, wherein the Complainants seek to restrain and enjoin the order of the Interstate Commerce Commission establishing and putting into effect certain rates, charges and practices as set forth in the order of said Commission of date April 4, 1927, as is fully set forth in said Bill of Complaint and the Exhibits attached thereto and made part thereof.

1

The Intervenors would show to the Court that the Galveston Cotton Exchange and Board of Trade, is a corporation created for the protection and advancement of the interests of cotton merchants engaged in business in the City of Galveston and that it numbers among its members, per- [fol. 91] sons, firms and corporations engaged in the purchase, sale concentration and exportation of cotton, and that the Galveston Chamber of Commerce, is an organization created in existence for the purpose of advancing and protecting the interests of cotton merchants in the City of Galveston, and has among its members, various persons, firms and corporations engaged in the purchase, sale and concentration and exportation of cotton at and thr-u- the Port of Galveston, and that each of said corporations appearing herein in behalf of and for the benefit of its members, and that said corporations and each of them, are parties and complainants and interested in and participated in the hearings, complaints and investigations held by the Interstate Commerce Commission and designated in Complainants' Bill as being Docket Nos. 13991 and 14940 on the docket of the Interstate Commerce Commission.

2

That said Intervenors file this their Intervention under and by the authority of the Acts of Congress, known as Section 1005 United States Compiled Statutes, 36 U. S. Statute

1150, and Section 1006 of the United States Compiled Statutes, being 36 U. S. Statute 115, which statutes provide:

"Communities, associations, corporations, firms and individuals who are interested in controversies of questions before the Interstate Commerce Commission or in any suit which may be brought by any one under the provision of this Chapter, or the Acts of which it is amendatory, or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceeding at any time after the institution thereof."

And further:

"Complainants before the Interstate Commerce Commission interested in a case, shall have the right to appear and be made parties in the case and be represented before the courts by counsel under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States."

3

Intervenors adopt the allegations contained in the answer of the United States of America, and of the Interstate Commerce Commission filed in this case, and intervene as Defendants in said cause.

4

Said Intervenors and each of them, would further show [fol. 92] the Interstate Commerce Commission, in due manner and form heard the complaints and the testimony adduced by them, and each of them, in all the proceedings had by said Interstate Commerce Commission, which proceedings are set forth in the Exhibits attached to Complainants' Bill, and findings and orders of said Interstate Commerce Commission were made and entered only after a full investigation and hearing had in said causes and the testimony presented in support thereof, especially the testimony presented on behalf of the Complainants, and that the record of the testimony introduced before and heard by the Interstate Commerce Commission in each and all of the hearings and investigations described in said Bill of Complaint amply supports the findings and orders of said Commission.

5

That Exhibit No. 3 attached to Complainants Bill, being the report of the Interstate Commerce Commission of date April 4, 1927, finds that the practices and actions of the Complainants in charging and assessing the rate of 80¢ for what is termed "city delivery" on cotton and 83½¢ on shipside for export cotton, was a discrimination against cotton merchants and shippers located back of the water front in the City of Galveston, and that upon consideration of all the facts and circumstances, that the Commission was of the opinion, and found that a fair and reasonable basis for equalizing city delivery and shipside rates would be to increase city delivery rates 1¢ per hundred pounds and reduce shipside rates, exclusive of wharf charges to the basis of the increased city delivery rates, and that such finding was without prejudice to further inquiry into the reasonableness of the above rates in connection with other causes pending before said Commission, and that the order of said Commission required the Complainants to publish and establish in the manner required by law, and in the manner indicated in the report of the Commission, export and interstate domestic rates, charges, regulations and practices, which would remove the aforesaid undue prejudice and preference, but that said order in its terms does not fix the exact rate or charge to be made by the Complainants.

6

Intervenors would further show to the Court that the [fol. 93] services performed by Intervenors in delivering cotton from warehouses and compresses to vessels adjacent thereto, was a plant service, which finding was amply supported by the evidence before said Commission and before this Court.

7

That all of the facts and findings, judgments and orders of the Interstate Commerce Commission in the proceedings, hearings and investigations referred to in Complainants Bill, were and are supported by evidence presented said Commission and now before this Court.

Intervenors would further show to the Court that the rates and practices now in force and effect by the Complainants, as shown by Complainants Bill, and the evidence introduced before said Commission, discriminated against the cotton merchants, which are members of the two intervening corporations, and have caused and are causing such cotton merchants to suffer serious loss in their business, and if continued, will result in further losses, and that the members of the intervening corporations are without remedy in the premises.

Wherefore Intervenors pray that the application of these Complainants, for a temporary stay or suspension of the operation of said orders of the Interstate Commerce Commission, and for an interlocutory injunction suspending the enforcement, operation and execution of said orders, in whole or in part, or setting the same aside, and for a perpetual injunction decreeing that said orders be set aside, annulled and suspended and its operations, enforcement and execution forever enjoined, be by this Court in all things refused.

Galveston Cotton Exchange and Board of Trade, Galveston Chamber of Commerce, by Mart H. Royston, Attorney.

Duly sworn to by E. H. Thornton. Jurat omitted in printing.

[fol. 94] [File endorsement omitted.]

[fol. 95] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF MANCHESTER TERMINAL CORPORATION FOR LEAVE TO INTERVENE—Filed July 12, 1927

To the Honorable Judges of the District Court of the United States for the Southern District of Texas:

Now Comes Manchester Terminal Corporation, a Texas corporation, with its principal office in Houston, Harris

County, Texas, and respectfully prays leave to intervene in the above entitled cause and to become a party to said proceeding with the full right to appear and to take testimony and participate in all matters pertaining to said proceeding, and respectfully represents:

[fol. 96]

I

Your petitioner respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding in that it owns and operates a cotton warehouse and cotton concentration facilities, including cotton compresses, and also owns wharves or docks which are located in the vicinity of such warehouses, at the City and Port of Houston, Houston, Texas.

II

That it conducts a general public warehouse for the handling of shipments of cotton in interstate and foreign commerce and is engaged in the business of handling, receiving and shipping cotton in such commerce for and in behalf of the owners of such cotton.

III

That the situation with respect to this intervenor is not substantially different from that described in the bill of complaint in this cause in the case of the Houston Compress Company and in the case of the Ship Channel Compress Company, plaintiffs herein, save and except that your petitioner is not owned or controlled directly or indirectly by a firm of cotton merchants engaged in the buying, selling and shipping of cotton, as was set forth in the case of said two plaintiffs.

[fol. 97]

IV

That the order given by the Commission in this case will seriously impair, if not destroy the value of the warehouse and other property owned by your petitioner.

Wherefore petitioner respectfully prays that the following pleadings appended hereto be admitted as its pleadings and petition of intervention in this case.

Respectfully submitted.

Manchester Terminal Corporation, by R. C. Fulbright, Attorneys.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERVENTION OF MANCHESTER TERMINAL CORP.—Filed July 12, 1927

Now comes Manchester Terminal Corporation and, with leave of the court first had and obtained, files this its intervening petition in the above entitled and numbered cause, and for cause of action respectfully represents:

I

That plaintiff is a Texas corporation with its principal office at Houston, in Harris County, Texas, and plaintiff is engaged in the business of conducting a general public warehouse, public wharves and terminal and handling facilities, for the storage, concentration, merchandising, handling [fol. 99] and shipping of cotton in interstate and foreign commerce and for the purpose of receiving and shipping cotton in such commerce.

II

That petitioner's facilities at Houston are located adjacent to the Houston Ship Channel or Port of Houston and that among the facilities it owns is a wharf and wharf building upon such channel, which is divided into five steamship berths, where a space is assigned or allocated to steamships for the assembling of cargo-s of cotton for transportation in export commerce and that near to and in the rear of such wharf and wharf building, but distinct and apart therefrom, it owns and operates certain warehouses and cotton compresses for the handling of cotton, as aforesaid.

III

Your intervenor respectfully adopts the allegations of the complainants in the above cause and particularly those allegations which allege that the order of the Interstate Commerce Commission described in said bill of complaint is unlawful, arbitrary, unconstitutional and void, and respectfully represents that the matters and things complained of in said bill of complaint will place this intervenor under great disadvantage and penalty and will bring about great and irreparable damage in that it deprives your peti-
[fol. 100] tioner of the natural advantage of the location of its cotton warehouses and places it under a penalty or disadvantage and authorizes, grants or orders that preferences be granted to other warehouses at Houston and other ports, which are remote from the waterfront, all of which will seriously hinder and interfere with your petitioner's enjoyment and profitable operation of its warehouse facilities and plant.

IV

That your petitioner was not a party to the investigation and hearings held by the Interstate Commerce Commission and described in the bill of complaint herein, for the reason that the Interstate Commerce Commission had completed and closed all of its hearings and investigation in said cause prior to the organization of your intervenor as a corporation. Your intervenor was organized as a corporation under the laws of the State of Texas on or about July 13, 1926 and the Commission had completed its hearings and closed the same on or about June 19, 1926. Your petitioner, after its organization, began the construction and erection of a plant consisting of the facilities above referred to, at great cost and expense, and did not in fact begin any actual operations in the way of handling, storing and receiving shipments of cotton until several months after its organization.

V

That on or about June 14, 1927, your intervenor, having been advised by other parties that an order had been
[fol. 101] issued by the Interstate Commerce Commission in the proceeding described in the bill of complaint herein which would effect and impair the ability of your petitioner

to profitably and properly conduct its business and enjoy the benefits of its property, caused to be prepared and filed with the Interstate Commerce Commission an application for leave to intervene in the proceeding referred to and prayed that the Commission would recommend and modify its order and grant unto it a hearing so as to give to your petitioner an opportunity to show that such order was unjust, unreasonable, invalid and discriminatory against your intervenor, a copy of which application and pleading is hereto attached and marked Exhibit "A" and made a part hereof. Said exhibit explains in detail, together with illustrations and diagrams, to show in detail the operation of its plant and facilities and how the order of the Interstate Commerce Commission will seriously damage and cause irreparable damage to your petitioner. Said intervention is made a part hereof in like manner as though fully pleaded herein.

VI

That on or about July 11, 1927, the Interstate Commerce Commission denied the application of your intervenor and declined to modify its order or grant petitioner a hearing in said cause and your petitioner is without any means of relief other than through the equity powers of this court.

[fol. 102]

VII

That by its act in denying to your intervenor the hearing and the right to present its evidence to show that said order of the Commission should not be made with respect to this intervenor, and by reason of the fact that the order of the said Commission will deprive your intervenor of its property and place it at an even greater disadvantage and penalty than that set forth and described by said petition in this cause, the Interstate Commerce Commission has undertaken to deprive your petitioner of its property without due process and without the opportunity of a hearing, all of which is in violation of the Fifth Amendment to the Constitution of the United States, and is beyond the jurisdiction and power of the Interstate Commerce Commission.

Wherefore, premises considered, inasmuch as your petitioner is remediless in the premises, and by the strict rules of common law, and if the enforcement of the said order

of the Commission of April 4, 1927, and its said order of June 23, 1925, as made a part of the bill of complaint in this cause, is not stayed and enjoined, will suffer irreparable damage, and to the end that it may obtain the relief to which it is entitled, your petitioner respectfully prays that the order of the said Commission be set wholly aside and annulled and suspended, and its enforcement, operation and execution be forever enjoined, and that such interlocutory injunction or temporary stay or suspension of the [fol. 103] operation of said order be granted as is prayed for in the original bill of complaint filed herein, and that your petitioner have such other and further relief as may be proper in the premises.

R. C. Fulbright, Solicitor for Petitioner.

Duly sworn to by R. D. Ernst. Jurat omitted in printing.

[fols. 104 & 105] EXHIBIT "A" TO PETITION OF INTERVENTION OF MANCHESTER TERMINAL CORP.

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket, No. 14940

Application of Rates on Cotton to Gulf Ports

I. C. C. Docket, No. 13991

WEATHERFORD, CRUMP & COMPANY
vs.
ABILENE & SOUTHERN RAILWAY COMPANY et al.

I. C. C. Docket, No. 11965

GALVESTON COMMERCIAL ASSOCIATION
vs.
ALABAMA & VICKSBURG RAILWAY COMPANY et al.

Application of Manchester Terminal Corporation for Leave to Intervene and for Reconsideration and Modification of Order

Now comes your petitioner, Manchester Terminal Corporation, and respectfully represents that it has an interest in the matters in controversy in the above entitled pro-

ceedings and desires to intervene and become a party to said proceedings, and for grounds of intervention represents:

1

That petitioner is a corporation organized by the laws of the State of Texas with its principal office at Houston, in Harris County, Texas, and is engaged in the business of conducting a general public warehouse, public wharves and terminal and handling facilities for the handling of shipments of cotton in interstate and foreign commerce and for the purpose of receiving and shipping cotton in interstate and foreign commerce.

2

That in the course of its business, your petitioner receives and handles shipments of cotton which are made in interstate commerce from points in Oklahoma, Texas, Arkansas and Louisiana, and has constructed wharves and docks at the port of Houston, Texas, where it handles cotton for the public over such wharves and docks for loading on steamers for shipment in export and domestic commerce. Adjacent to the wharves and docks and in the same general vicinity your petitioner owns and operates warehouses or merchandizing facilities which are used as such facilities for the storage, concentration and classification and for the re-shipment of cotton owned by cotton producers, shippers and merchants, and it receives cotton in such warehouses where merchandizing services are performed thereon for or by the owners of the cotton and thereafter delivers such cotton from such warehouses to wharves and docks belonging to it or to wharves and docks located elsewhere at Houston or to other destinations reached by rail trans- [fol. 106] portation beyond Houston, and that such cotton, or a substantial part thereof moves in and moves out in interstate or foreign commerce.

3

Petitioner further represents that its plant and facilities have been constructed within the past year and since the hearings which were held by the Interstate Commerce Commission in the above proceedings, and that at the time of

such hearings your petitioner was not engaged in such business and did not know that it would be affected by the matters being inquired into by the Commission in such proceedings, and did not know and did not have an opportunity for presentation of testimony therein and furthermore it had no facilities in existence at that time for the shipment and handling of such cotton.

4

Your petitioner further represents that it has located its warehouses and merchandising cotton facilities near to the wharves and docks constructed by it at the port of Houston for the reason that such location would give it a natural and proper advantage of location in that shipments of cotton which had been merchandized in such warehouses could be expeditiously moved therefrom to nearby wharves without necessitating further movement by railroad, and that its plant has been equipped with electric trolley devices and gasoline motor-tractors and trailers together with other devices by which such cotton may be handled from such warehouses to the wharves and placed in the berths allocated to ships serving the wharves, and that the attached exhibits "A" and "B" which are hereby referred to and made a part hereof represent graphically the location of the wharves, docks and slips and also the warehouses and other facilities of petitioner. By reference to the said Exhibit "B" attached hereto it will be noted that the wharf and wharf house is entirely separate and distinct from the warehouses in the plant owned by your petitioner and intervening railroad tracks separate the warehouses from the wharf house. Shipments moving to vessels must be placed in the respective berths marked "A," "B," "C," "D" and "E" on said plat according to the assignment of the berths to the respective ships. The trolley system referred to herein does not extend to the wharf house, but temporary bridges or cross-overs are utilized between the warehouse and the wharf house by placing the same over the intervening tracks and using such as bridges so that the motor tractors and trolleys and hand-trucks may be operated over the same in moving cotton from the warehouse to shipside. The trolley lines

are used for the movement of cotton between various compartments in the warehouse and to the press room, being what is defined on the map as the Warehouse and Compress Department.

5

That under the decision and order of the Commission rendered in the above case under date of April 4, 1927, the Commission describes warehouses which are located so that cotton may be delivered to nearby-by wharves with-
[fol. 107] out the necessity for using rail transportation or without the necessity of using drays or barges as "Waterfront Warehouses" and that under such definition, the warehouses of your petitioner would be characterized as waterfront warehouses, although they are not in fact at the waterfront.

6

Your pettitioner would respectfully represent that under such order and decision of the Commission other warehouses located at the ports are called "back-from-the-waterfront warehouses" where deliveries of cotton are made from warehouses to wharves by the use of drays or barges or switch by railroad and the railroads are authorized to refund or make allowances to the warehouses or the users of such warehouses, the cost of such drayage, barge or switching service including the cost of placing such cotton upon the wharves and within the ships' berths, but prohibits the carriers from making any such allowance for the services that may be incurred by your petitioner and the users of its warehouses in transporting cotton from such warehouses to the wharves and to the ships' berths which lie near such warehouses with the result that your petitioner and the users of its facilities are placed at a net disadvantage in competing with the warehouses and the users thereof which are termed by the Commission as back-from-the-waterfront warehouses.

7

Your petitioner represents that it costs a substantial sum of money to make deliveries of cotton from points within

the warehouses to the wharves and in the berths adjacent thereto, which sums your petitioners allege are approximately 2 cents per 100 pounds in excess of the costs of moving such cotton from points within the warehouses to cars adjacent to such warehouses where the same may be loaded for movement to other wharves or other facilities than those adjacent to such warehouses, and that such cost is also in excess of the cost incurred and services rendered in reaching drays and other facilties from points in the warehouses back-from-the-waterfront.

8

Your petitioner further represents that under the decision and order of the Commisison the rates on cotton transported to Houston or Galveston and delivered upon the wharf in the ship's berth at shipside including the service of delivery thereon, whether such cotton had been concentrated at a back-from-the-waterfront warehouse or at an interior warehouse, are no greater than the rates on cotton to warehouses located at Houston and Galveston and the services rendered in reaching drays and other facilities from points in the warehouses back-from-the-waterfront, and the effect of the order of the Commission in this case is to require that where such cotton is handled in so-called back-from-the-waterfront warehouses and has not enjoyed a previous transit privilege from the railroad, the railroads are required to reimburse the shipper for the cost of moving such cotton from points in such warehouses to the wharves and of placing it in the ship's berth within reach of ship's tackle and that in the case [fol. 108] of your petitioner the railroads are prohibited from absorbing any part of the cost of transporting such cotton from points in its warehouse to the near-by wharves and placing it within reach of ship's tackle and that such action arbitrarily deprives your petitioner of the benefit of its location near the water facilities and places it at a net penalty or disadvantage in competition with warehouses which are situated remotely from the waterfront at the ports of Houston and Galveston and will effectually deprive your petitioner of its property used for such facilities.

That at various warehouses located at Galveston dray lines go within the warehouses and take up the cotton from points within the warehouse and transport it out of the warehouses and to the wharves where it is unloaded and placed according to the instructions of the steamship representatives in the berths assigned to the ships and at other warehouses at Houston the cotton is switched by the railroads and the railroads place the cars at a compartment the cotton is located and perform the service of switching such cars from such points to the wharves and there unload the cotton and place it in the berths assigned to the steamers according to the instructions of steamship representatives and in other cases at Houston barge lines take the cotton from the warehouse and transport it to shipside where the cotton is loaded from the shipside into the ship. That in all of the three characters of cases above described the carriers under the decision and order of the Commission will absorb the entire cost of such service, while at the same time no such absorption would be allowed for the service of moving the cotton from the warehouses of your petitioner to the wharves which are owned by it, although such service is substantially in excess of that performed by the other warehouses above mentioned. Your petitioner can procure cars to be placed opposite compartments in its warehouses where cotton is located and can have the cotton switched out by the railroads to other wharves at Houston and in such case the cost of switching including the placing of the same on the wharves, will under the order of the Commission be absorbed by the railroads and the only expenses incurred by your petitioner or the owners of the cotton using the warehouses of your petitioner, would be the hand-trucking service from the compartment to the car placed alongside the compartment; whereas, in all cases where your petitioner has to move such cotton to its wharves the cotton does not only undergo service which is analagous to the movement to cars but must in addition thereto be transported by trolley line and other conveyances distances ranging from 300 to 2,500 feet and unloaded and placed in accordance with the instructions of steamship agents in the berths assigned to the

steamers serving such wharves, all of which is a much more expensive service and is a substantially different service from that performed in merely loading the cotton from the compartment to the cars and is likewise more expensive and is substantially different from the service performed by other warehouses in placing their cotton within reach of drays or loading it upon cars or moving it to barges as above set forth in the case of other warehouses, and that the net result is that your petitioner will be placed [fol. 109] at a serious disadvantage and will be subjected to unjust discrimination and its competitors will enjoy undue preferences in connection with the performance of such services under the decision and order of the Commission in these cases.

10

That the decision and order of the Commission is violative of sections 2 and 3 of the Interstate Commerce Act and of Section 500 of the Transportation Act which enjoin upon the Commssion the policy of promoting and encouraging water facilities and that such action will not only discourage the use of water facilities, but will greatly penalize facilities which have been constructed for the purpose of handling cotton economically between the railroads and the ships at the port of Houston and place a penalty upon what under ordinary conditions would constitute the most economical service to be performed in transporting such cotton from warehouses to shipside.

Wherefore your petitioner prays that it be permitted to intervene herein and be made a party to this proceeding with the same rights as other parties thereto and in the event its intervention be so allowed your petitioner further prays, premises considered, that the Commission re-consider its decision and order in this proceeding and modify its order so that the same shall not deprive your petitioner of the natural advantages of its location and so that the aforesaid preferences and discriminations shall be eliminated, and so that the users of each warehouse facility shall bear the proper charge for the services rendered or to be rendered in transporting cotton from such warehouse facilities to shipside or in the alternative, that your peti-

tioner be granted the right to an allowance or to have the users of its warehouses receive an allowance from the railroads for the movement from its warehouses to shipside in like manner as is authorized and directed for warehouses located back-from-the-waterfront and in the event the Commission shall not consider that it has the power and authority to modify its order in this case without a hearing, your petitioner respectfully requests that the case be reopened and the order set aside or suspended pending the further hearing and investigation by the Commission of the matters and allegations herein set forth and that the Commission shall grant such other and further relief as your petitioner may be justly entitled to receive.

Respectully submitted.

Manchester Terminal Corporation, by R. D. Ernst, Vice-President & General Manager.

Address: 426 Houston Cotton Exchange Bldg., Houston, Texas.

Dated June 14, 1927.

(Here follow Exhibits A and B, marked side folio pages 110 and 111 & 112)

[fol. 113] In United States District Court

Equity. No. 310

Alexander Sprunt & Sons, Inc., et al.

versus

The United States of America

Equity. No. 311

Texas & New Orleans Railroad Co. et al.

versus

The United States of America

Consolidated Causes

Order Consolidating Causes—Filed July 12/27

By agreement of all parties, complainants, defendants and intervenors, made in open court on this 12th day of July, 1927,

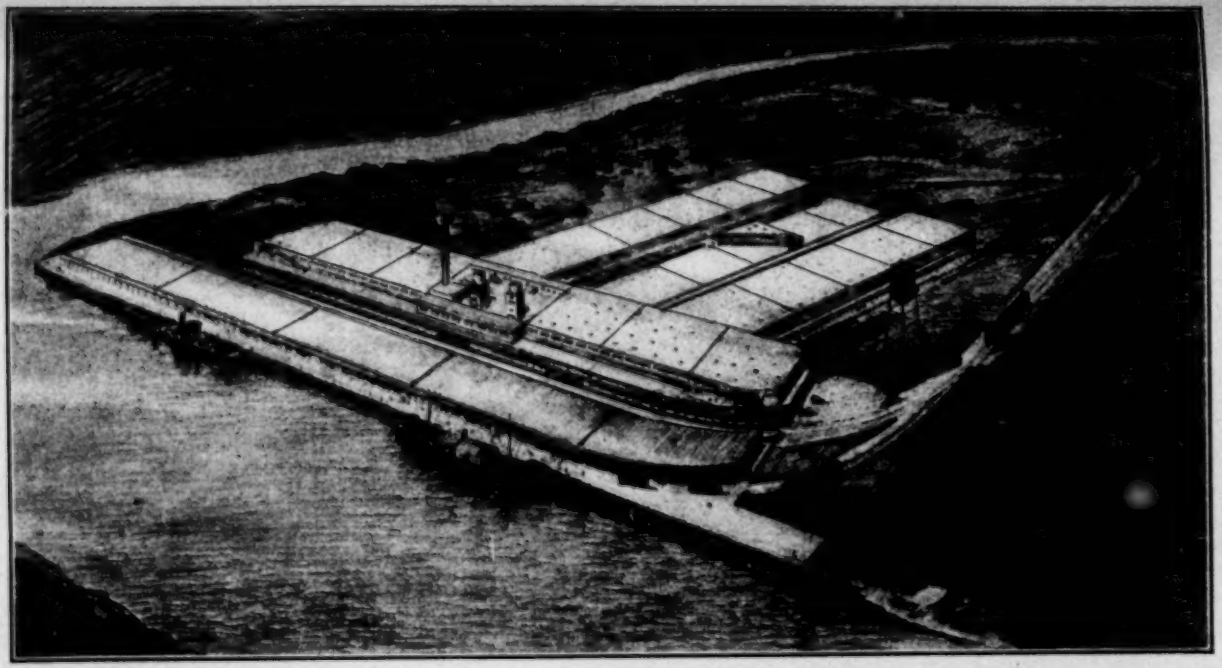


EXHIBIT "A"

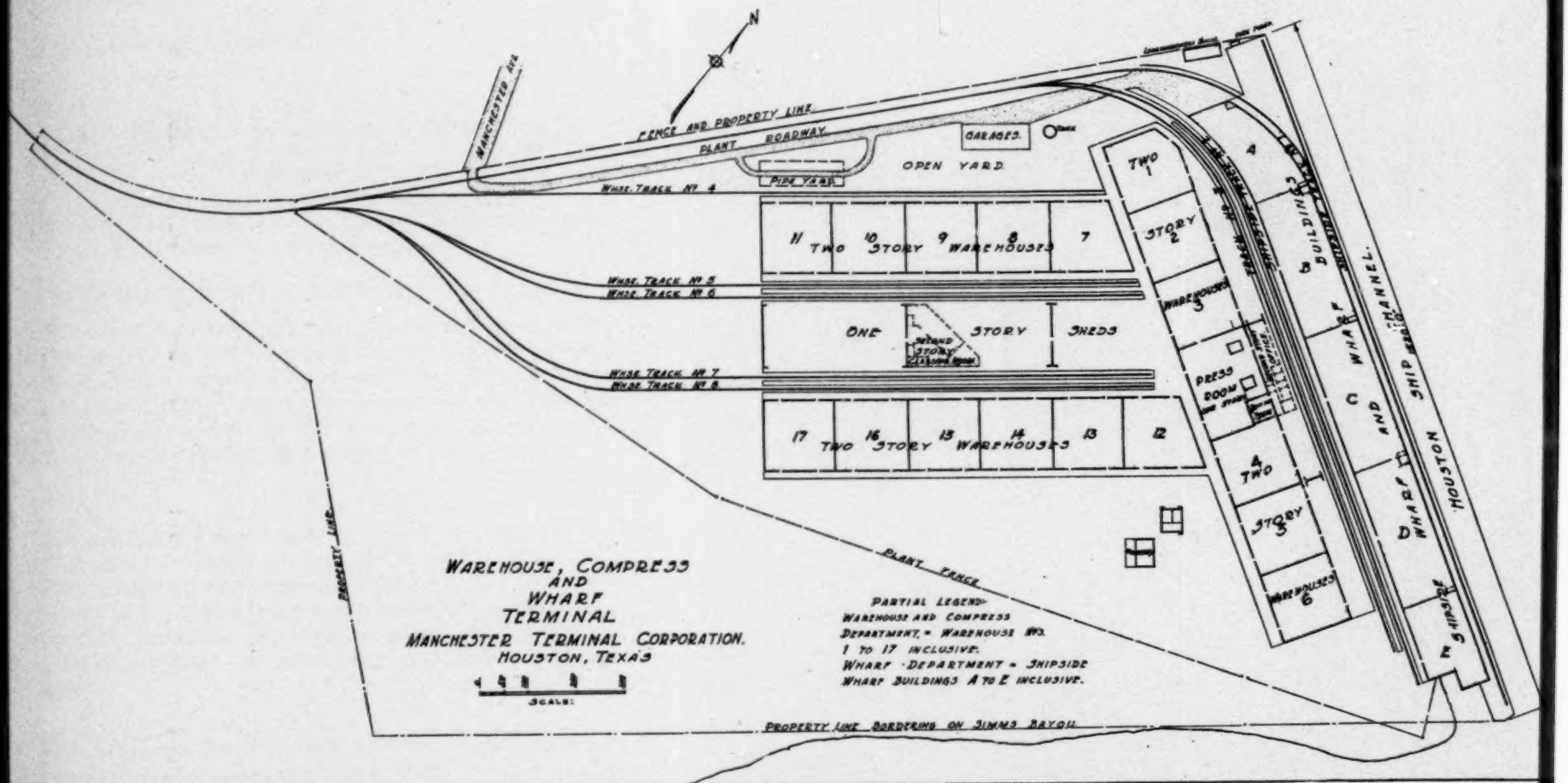
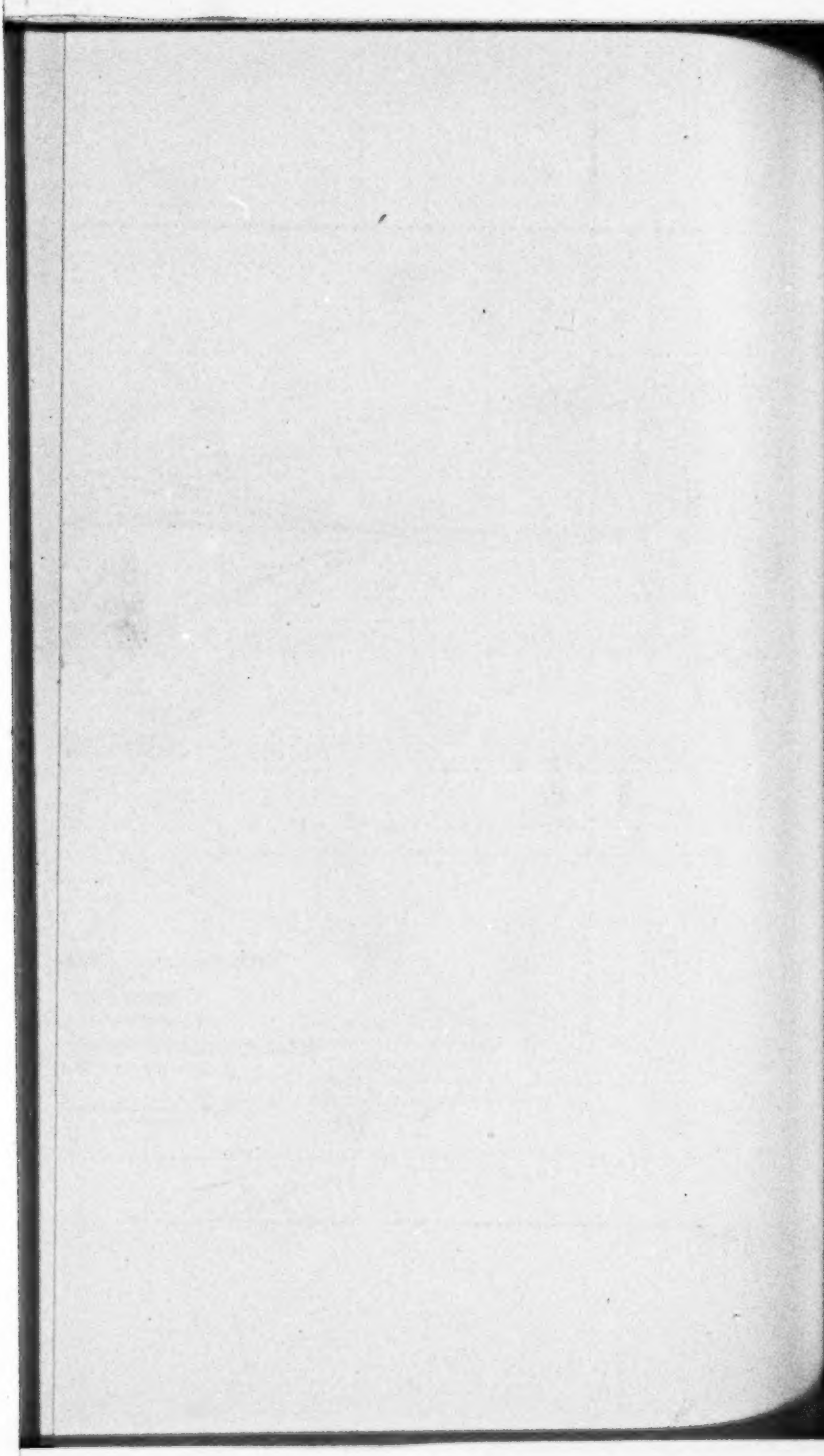

N
MANCHESTER AVE.
FENCE AND PROPERTY LINE
PLANT ROADWAY
GARAGES
OPEN YARD
PIPE YARD
WHSE. TRACK NO. 4
WHSE. TRACK NO. 5
WHSE. TRACK NO. 6
WHSE. TRACK NO. 7
WHSE. TRACK NO. 8
11 TWO 10 STORY 9 WAREHOUSES 8 7
ONE STORY SHEDS
17 TWO 16 STORY 15 WAREHOUSES 14 13 12
TWO STORY WAREHOUSE 1
WAREHOUSE 2
WAREHOUSE 3
PRESS ROOM
4 TWO STORY WAREHOUSE 5
WAREHOUSE 6
4
B BUILDING
C WHARF
D WHARF
E WHARF
SHIP CHANNEL
HOUSTON
PROPERTY LINE
PLANT FENCE
PROPERTY LINE BORDERING ON SIMMS BAYOU
WAREHOUSE, COMPRESS AND WHARF TERMINAL
MANCHESTER TERMINAL CORPORATION.
HOUSTON, TEXAS
SCALE:
PARTIAL LEGEND:
WAREHOUSE AND COMPRESS DEPARTMENT, = WAREHOUSE NOS. 1 TO 17 INCLUSIVE.
WHARF DEPARTMENT = SHIPSIDE WHARF BUILDINGS A TO E INCLUSIVE.

EXHIBIT "B"



It is ordered, that the above entitled and numbered causes be and they hereby are consolidated as a single cause and with a single record.

Dated this 12th day of July A. D. 1927.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fol. 114] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF NEW ORLEANS JOINT TRAFFIC BUREAU FOR LEAVE TO INTERVENE—Filed Sept. 10, 1927

To the Honorable Judges of said Court:

Now comes New Orleans Joint Traffic Bureau, a voluntary organization with its principal office in New Orleans, Louisiana and respectfully prays leave to intervene in the above entitled cause and become a party to said proceedings with the full right to file brief herein and become a party to said proceeding and respectfully represents:

I

This petitioner desires to intervene in this cause in behalf of plaintiffs and in support of the petition for a permanent injunction decreeing that the order of the Interstate Commerce Commission described in the Bill of Complaint filed herein, be set aside, annulled and suspended and its enforcement, operation and execution be forever enjoined.

II

Your petitioner, the New Orleans Joint Traffic Bureau is a voluntary organization organized under the laws of the State of Louisiana with its principal office and place of business at the Board of Trade Building in said city and is made up of constituent commercial and trade organizations, of persons, firms and corporations of the city of New

Orleans, including the New Orleans Cotton Exchange, as well as other organizations and there are numbered among [fols. 115 & 116] the members of such constituent bodies for which this intervenor acts in rate and traffic matters, various firms and individuals who are engaged in buying, selling and shipping cotton from points in the states of Louisiana, Arkansas, Texas and Oklahoma to New Orleans in Interstate Commerce and in making shipments from New Orleans in Interstate and foreign commerce in competition with various other persons firms and corporations located at interior points in said states.

III

That various persons, firms and corporations at New Orleans, members of your Petitioner, are engaged in purchasing cotton at various points in the territory described in the Bill of Complaint filed herein and in shipping the same in interstate commerce to New Orleans, La., where such cotton is concentrated or stored in warehouses and also in the merchandising of such cotton and shipment of cotton from the concentration or storage warehouses where cotton stocks are maintained to points in other states and to foreign countries including shipments made over the wharves and via steamship lines at the port of New Orleans.

IV

That the order of the Interstate Commerce Commission described in the Bill of Complaint in this cause, if permitted to go into effect, will seriously impair the business of members of your petitioner and will give undue preference and advantage to their competitors who concentrate or store cotton and maintain stocks thereof at points in the interior of the States of Louisiana, Oklahoma, Texas and Arkansas.

Wherefore petitioner respectfully prays that it be permitted to file its intervening petition in this cause, and to become a party to said cause

Respectfully submitted

R. C. Fulbright, Solicitor for New Orleans Joint TrafficBureau.

[File endorsement omitted.]

[fol. 117] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF HOUSTON COTTON EXCHANGE & BOARD OF TRADE FOR LEAVE TO INTERVENE—Filed Sept. 10, 1927

To the Honorable Judges of the District Court of the United States for the Southern District of Texas:

Now comes Houston Cotton Exchange & Board of Trade, a Texas corporation with its principal office in Houston, Harris County, Texas, and respectfully prays leave to intervene in the above entitled cause and become a party to said proceeding with the full right to participate in all matters pertaining to said proceeding and respectfully represents:

1

Your petitioner desires to intervene in this cause in behalf of plaintiffs and in support of the petition for a permanent injunction decreeing that the order of the Interstate Commerce Commission, described in the Bill of Complaint filed herein, be set aside, annulled and suspended and its enforcement, operation and execution be forever enjoined.

2

This petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Texas, with its principal office at Houston, Harris County, Texas, and is organized as a Board of Trade or commercial organi-[fol. 118] zation consisting of various persons, firms and corporations located at Houston, Texas and engaged in the business of buying, shipping and selling cotton and this petitioner exists among other things for the purpose of promoting trade and increasing facilities and the amount of business done by its members and others at the city of Houston and promoting the development of the City and Port of Houston.

3

That numerous members of your petitioner are engaged in purchasing cotton at points in the territory described

in the Bill of Complaint herein and in shipping the same in interstate commerce to Houston, Texas, and other points where such cotton is concentrated or stored in warehouses and also in the merchandising of such cotton and shipment of cotton from the concentration or storage warehouses where cotton stocks are maintained to points in other states and in foreign countries including shipments made over the wharves and via steamship lines at the port located at Houston, Texas.

4

That the order of the Interstate Commerce Commission described in the Bill of Complaint in this cause, if permitted to go into effect, will seriously impair the business of members of your petitioner and will give undue preference and advantage to their competitors who concentrate or store cotton and maintain stocks thereof at points in the interior of the states of Texas, Oklahoma, Louisiana and Arkansas.

Wherefore petitioner respectfully prays that it be permitted to file its intervening petition in this cause, a copy of which will be presented to the court and be permitted to intervene and become a party to said cause.

Respectfully submitted.

R. C. Fulbright, Carl G. Stearns, Solicitors for Houston Cotton Exchange & Board of Trade.

9/1/27.—Houston Cotton Exchange & Board of Trade granted leave to intervene.

[fol. 119] [Endorsement omitted.]

[fol. 120] In United States District Court

[Title omitted]

Order Granting Preliminary Injunction—Filed July 13/27

Consolidated

Upon consideration of the application for preliminary injunction, it is ordered that same be granted, and an inter-

locutory injunction issue herein, suspending the enforcement, operation and execution of the order of the Commission complained of in the above consolidated causes until the further orders of the court.

July 13, 1927, New Orleans, La.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fol. 121] IN UNITED STATES DISTRICT COURT

[Title omitted]

Consolidated

Before Foster, Circuit Judge, and Burns and Hutcheson, District Judges

OPINION—Filed Dec. 5, 1927

HUTCHESON, D. J.:

These two suits involve the same questions and were tried together. They are brought to enjoin the enforcement of an order of the Interstate Commerce Commission requiring the carriers to equalize export and domestic rates on cotton at Gulf ports.

In suit No. 310 the plaintiffs are owners of water front cotton compresses and warehouses at Houston, Texas, and others having similar interests. In suit No. 311 the plaintiffs are railroads. The bills are very lengthy, but it is unnecessary to state them, as the main contentions of plaintiffs will be briefly referred to later.

In proceedings to which various railroads, shippers, cotton warehouses and compress owners and interested public commercial bodies were parties, the Interstate Commerce Commission investigated rates, charges and practices relative to the shipment of cotton from points in Arkansas, Oklahoma, Louisiana and Texas to Gulf ports. 77 I. C. C. 388; 100 I. C. C. 159; 123 I. C. C. 685.

The reports of the Commission, initiallly and on rehearing are quite lengthy and somewhat involved. For the purpose of these cases it is sufficient to refer briefly to certain [fol. 122] material facts found, using those pertinent to Houston as illustrating the general principles underlying the cases.

It appears that cotton is concentrated at interior points where it is compressed to a certain degree and then shipped into Houston, where it is further compressed to higher density before being exported, in order to effect a saving in ocean freight rates.

The tariffs for many years have allowed one free stoppage in transit for compression and merchandising, which latter term comprehends the weighing, sorting, marking and grading of cotton. For a number of years there have been two rates in force at the port of Houston, 80 cents per hundred pounds for local delivery, applicable throughout the switching limits and 85 cents for export, which latter includes freight charges of about 1.5 cent per hundred pounds, making a spread between domestic and export rates of 3.5 cents, this difference representing not the absolute but the approximate average cost of transferring cotton from the city compresses and warehouses back of the water front, hereinafter called "uptown" facilities to shipside.

Prior to the beginning of this present controversy there were no warehouses on the water front. There were warehouses and high density compresses in Houston situated back from the water front and in the switching limits, at a distance of from one to five miles.

Under this two rate plan the uptown facilities could bring their cotton in on the domestic rate of 80 cents and after merchandising or compressing it, declare it for export, when the railroads would carry it to the port for an additional sum of 3½¢. On the other hand the uptown facilities might, and usually did, prefer to dray their cotton to shipside paying the expense themselves. In either event it would cost them, to get their cotton to shipside about 83.5¢.

This was the practice which the railroads had inaugurated to equalize the uptown facilities using domestic rates, with interior compresses using export rates, so that whether cotton moved to port on an export rate, with the privilege [fol. 123] of stoppage in transit or moved on the domestic

rate, it would cost the uptown facilities the same to get it to shipside.

This practice was approved by the Commission in Louisiana Cotton 46 I. C. C. 451 and Galveston Commercial Association vs. A. & V. Ry., 77 I. C. C. 388.

At the time of these proceedings all the warehouses and compresses at the ports were back from the water, requiring further transportation to reach shipside, and the practice of making export rates higher than domestic rates by an amount not more than the cost of delivering the cotton from "uptown" to shipside resulted in an equality between all competing facilities and all parties were satisfied.

Commencing in 1921, through the placing of high density compresses on the piers of the Galveston Wharf Company, followed later by the erection of large warehouses with compresses on the water front at Houston, disturbing influences were injected into the situation by reason of the fact that facilities, hereafter called "water front," were able in some cases to deliver a great part of their cotton, in other cases all of it, by trucks or equivalents to shipside.

Tariffs do not define shipside delivery. Under the practice of these ports it consists in delivery to within 200 feet of the ship's tackle. The water front warehouses at Houston are so arranged that a considerable part of the cotton may be placed within that distance from the ship's tackle by the judicious berthing of ships, and these warehouses are also provided with an electric trolley system for handling the cotton when stored too far for ordinary stevedoring.

These warehouses, by using the domestic rate of 80 cents can get their cotton within reach of shipside by trucks or equivalents 3½ cents cheaper than the interior and "uptown" facilities.

This situation resulted in the filing of a complaint by Weatherford Crump & Co. in Docket 13991 asking the abolition of the two rate plan. While that proceeding was pending the Commission instituted an investigation of its own in No. 14940 and consolidated No. 13991 with it.

At the conclusion of the investigation and hearing thus instituted, the Commission, on June 23, 1925, filed its re- [fol. 124] port which found in substance that the existence of the two rate plan was unduly prejudicial to warehouses and compresses located at interior points and back from the

water front at ports and unduly preferential of warehouses and compresses located on the water front and as the result of these proceedings carriers were ordered "to readjust their rates so that such rates would not exceed the domestic rates by more than the wharfage charges."

Thereafter the carriers, upon the ground that they could not remove the preference in the manner indicated in the order of the Commission without violating its previous order in Docket No. 11965, and for the further reason that the carriers and interested parties had not been able to agree upon the rate to equalize the carriers' revenues and remove the discrimination, filed a petition to reopen, and upon this petition and that of certain persons not parties to the original proceeding, but plaintiffs in Equity No. 310, the Commission, by order, directed the reopening.

The order among other things, provided:

"It is further ordered that said proceedings be and they are hereby reopened for further hearing, in order to determine whether conditions exist which were not developed during previous hearings, or whether changes have taken place which would justify any modification of our finding in 100 I. C. C. 159—"To determine what rates should be established to comply with our finding and order."

After extensive hearings the Commission filed its report on April 4, 1927, and promulgated the order from which the plaintiffs in the cases at bar are seeking relief. In the report the Commission reaffirmed its finding that the two rate plan was unduly prejudicial and should be abolished, and found that the carriers should inaugurate one rate of 81 cents and on these findings entered the orders complained of.

In the course of the report the Commission declared reasonable the practice of the carriers to make allowance to shippers who, in lieu of switching, dray their cotton from uptown warehouses to shipside, when made on cotton which the carriers are obligated to transport to shipside under transit arrangements, and they denied the contention of the water front facilities that if the city deliv- [fol. 125] ery and shipside rates are to be equalized, the carriers should be required to discontinue the drayage allowance, or make allowance for handling the cotton from water front warehouses to shipside.

They said "The respondents (carriers) have asked us to determine whether such allowances may be made at the water front facilities, and if they may be, what they should be. Upon the present record we see no reason for condemning a reasonable allowance for drayage from uptown facilities under the circumstances recited above, such drayage being a substitute for rail transportation. But such allowances must not be more than reasonable, considering the benefit to respondents (carriers) flowing from such substitute service, and must not be used as a cloak for unlawful preferences to shippers furnishing such substitute service. Not all of the cotton handled by the water front facilities is delivered to shipside at adjacent wharves or piers, and as to such cotton of the character referred to above as is delivered to ships at other wharves or piers, the water front facilities occupy no different position from that of the uptown facilities, and upon such cotton respondents may properly make reasonable drayage allowances under similar circumstances. This applies equally to barging, where barging is used as a substitute for switching. But upon cotton delivered to shipside from and by water front warehouses or compresses over adjacent wharves or piers operated as a part of or in conjunction with such warehouses or compresses, a different condition exists. The hand or electric trucking or movement by overhead trolley from the part of the water front facility known as the warehouse or compress to that part known as the wharf, is not a substitute for rail transportation, but is an intra plant movement, just the same as the handling of cotton from the interior of an uptown warehouse to the railroad car or dray is an intra plant movement.

No allowances may lawfully be made for these intraplant movements."

The shippers (plaintiffs in No. 310) and the carriers (Plaintiffs in No. 311) are at one in their contention that the Commission was without authority in law and in fact to initiate and fix the rate of 81 cents as they did, because they say the interested parties were not afforded a hearing as to its reasonableness and because there was no evidence to justify its establishment.

The shipper plaintiffs object to raising the domestic rate to 81 cents, and the carrier plaintiffs object to lowering the export rate to 81 cents.

The shippers, plaintiffs in No. 310, however pitch their main attack upon the primary ground that the order was entered in an attempt to equalize commercial conditions not in fact equal, and that it resulted in a confiscation of their property for the benefit of the interior and uptown warehouses. They say that transportation conditions, the services rendered and the privileges extended under the export rate in excess of those under the domestic rate jus- [fol. 126] tified the difference between the two and that the Commission did not order the change upon a proper consideration of transportation questions, but merely in order to and the order had the result of, enabling warehouses not so advantageously situated as plaintiffs' to compete with them; that this was not rate regulation, but confiscation.

They say further, that if the evidence does present proper transportation considerations which would justify an order of the Commission fixing a one rate plan, that no such order was in fact entere but that the Commission, by directing the allowance by the carrier for substituted service to uptown compresses, and denying it to water front compresses, does not abolish the two rate plan in favor of the single rate, but in fact establishes a multi rate plan, where each facility, except the water front will pay a rate varying with the cost of the service from its plant to shipside, with the result that the water front compresses, which at great expense have secured their sites, constructed their plants, and arranged for the handling of cotton to shipside are penalized for their foresight and expenditures through an unjust rate scheme.

They say the Commission has in effect said to the compresses and warehouses at the ports what the Mother said to the girl in the old rhyme:

> "Mother, may I go out to swim?
> Yes, my darling daughter;
> Hang your clothes on a hickory limb,
> But don't go near the water."

and that if such ruling stands, plaintiffs and those similarly situated, had better sell out, move back from the

waterfront and thus put themselves in a position of equality with their uptown competitors.

As to the fixing of a particular rate, it is conceded that the Commission did not have the power to establish as a rate reasonable and just per se 81 cents or any other rate, for the question of the reasonableness of the rates per se was not in issue, and the hearing which the law requires for the establishment of such rate was not afforded.

Plaintiffs in the two cases here, say that that is just what the Commission has attempted to do, while the Commission and those in agreement with it, with equal vigor declare that the Commission has done no such thing. They [fol. 127] say that the rate suggested has been put in at the invitation of the interested parties for the purpose of removing the discrimination and subject to the right of the carrier or shipper, in an appropriate proceeding and manner, to attack its reasonableness, and that the Commission had full authority to do under the law.

At the hearing on the application for temporary injunction the Court had no difficulty in concluding that the Commission had the power, in the state of the case presented by the record, to find a condition of undue prejudice resulting from the two rate plan, and that no ground for equitable relief would have been presented if the order of the Commission had gone only that far.

In short, that if the parties had brought into review the order of June 23, 1925, entered in 100 I. C. C. 159, merely finding discrimination and ordering its removal, the case would have presented no difficulty.

Upon the point presented in No. 311 by the carriers that the fixing of the rate was arbitrary in that it was fixed without a hearing upon and a determination as to its reasonableness and the point presented in the shippers bill in No. 310 that by reason of that part of the report quoted above which has to do with allowances for substituted service, the order did not in fact establish a one rate plan, but undertook to establish a plurality of rates by which those disadvantageously situated within switching limits would be equalized with plaintiffs, the Court experienced considerable difficulty in reaching an agreement.

Some of the members of the Court saw the matter as the Commission and those on its side see it, that the order

merely fixed a rate which entitled a shipper to get his cotton to the port, and that that part of the report which had to do with allowances was collateral to and no part of the order, or if a part of the order, was a valid exercise of authority, while others were impressed with the contention of the plaintiffs that the Commission had ordered allowances in one case and disallowances in the other and that there was grave question whether such an order did not create a condition of preference of the uptown warehouses by permitting them to get their cotton to the port at the expense of the railroad, while requiring the water front warehouses to pay their own costs.

[fol. 128] In short, the Court was in agreement that the uptown and the water front facilities should be charged the same rate, in the same switching limits. They were in doubt whether that was the effect of the order. They have, after the most careful review of the able briefs of counsel reached the conclusion that the only question for consideration is the rate established. That if that rate is the same for all persons in the same territory, that is the end of *of* the matter. That it cannot make any legal difference whether the carrier performs the service continuously or after a stop for concentration allowed by its tariff, or makes allowance in lieu of, but only in lieu of transportation, and that if attention is fixed upon the movement by the carrier, the difficulties of the case will disappear. That they arise out of, and only out of, a consideration of allowance in lieu of transportation.

That this confusion can and should be avoided by disassociating the rate from the allowances and considering each upon its own merits. That it is time enough for a shipper to complain of an allowance or a disallowance when there has been an order on it, and that the present contention is purely academic and speculative. They believe that if the water front warehouses can have cotton delivered to their own plant facilities by which they can put the cotton to shipside, it is no concern of theirs that an uptown warehouse gets its cotton to shipside at the same transportation cost. That the fact that the water front warehouses have spent money to get their sites, and made expenditures upon intra plant equipment is no matter to be considered in rates. That they are entitled to as good a rate as others situated

in the same limits but that there is no reason why they should have better rates.

In short, that they have contributed nothing to transportation, as such, in building where they did and in equipping their plants as they have, and that for what they have furnished other than transportation service, they cannot in law recover.

And finally, the Court is in agreement that whatever the order of the Commission ought to be in a specific instance upon a specific claim or allowance, or disallowance, or whatever relief might be obtained against such order, the report [fol. 129] of the Commission is so delivered and the order on it so entered as that there is no matter now presented for injunctive relief.

Proctor & Gamble vs. U. S. 225 U. S. 282.
Manufacturers Railway vs. U. S., 246 U. S. 457.
U. S. vs. Los Angeles, 273 U. S. 299.

Upon the other point asserted by both carrier and shipper viz: that they are entitled to relief as against the naming of 81 cents as the rate to be adopted in order to remove the discrimination found (1) because the Commission cannot initiate a rate without a determination of its reasonableness per se, and (2) because if the Commission has the power to do so, there is no evidence here to justify its finding, we have reached the conclusion that plaintiffs are wrong on both points, though not without, at least on the part of the writer, considerable difficulty.

Considering them inversely, it is conceded on all sides that the proceeding before the Commission was not designed to and that the Commission did not attempt to, fix the rate of 81 cents as a just and reasonable rate, per se.

The carrier and shipper plaintiffs assert that the Commission has no power to fix a rate unless its reasonableness per se, is determined.

The Commission, and those on its side, declare that where, as in this case, a rate is selected between two rates, both of which have been declared to be within the zone of reasonableness, the finding of the Commission establishing such rate required only evidence that it was a just and reasonable rate to effect removal of the discrimination, and not that it was just and reasonable per se, citing:

U. S. vs. Illinois Central R. R., 263 U. S. 515.
Swift Lbr. Co. vs. Fernwood & Gulf R. R., 61 I. C. C. 485.
Arkansas Jobbers Assn. vs. Dir. Gen., 59 I. C. C. 662.
Ridenour-Baker Mer. Co. vs. A., T. & S. F., 113 I. C. C. 629.

In addition to these cases, the Commission cities as analogous decisions of the Commission and of the Courts Sec. 13, Par. 4.

The difference between the section there discussed and Sec. 15 under which the action here was taken is apparent. There the requirement is merely that the Commission shall prescribe the rate, fare or charge to be observed in such manner as in its judgment will remove preferences, whereas [fol. 130] here, where a discrimination is found, the Act provides:

"The Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare or charge, or rates, fares or charges to be thereafter observed in such cases, and * * * what individual or joint classification, regulation or practice is or will be just, fair and reasonable to be thereafter followed."

and it my opinion that decisions construing Sec. 13 throw little light on the section at bar.

The Court is convinced that while under Sec. 3 under which this proceeding was taken, it was competent for the Commission to not only forbid the discrimination, if there was one, but to fix a rate which it found to be just, fair and reasonable which would do away with the practice condemned, it is essential to the fixing of such a rate that a hearing be had and a finding made upon its reasonableness.

The full Court is, however, of the opinion that a fair construction of the words "just and reasonable" as used in the context above quoted, permits the conclusion that in a discrimination case under Sec. 3 such as this is, it is only necessary that the rate fixed upon to remove the discrimination be found to be just and reasonable for that purpose, and that it is not necessary that it be found just and reasonable per se.

So believing, we overrule the first contention of plaintiffs, that the Commission is without power in this kind of proceeding to fix as just and reasonable for the purpose of removing a discrimination, a rate which has not been found to be just and reasonable per se.

We are further of the opinion that in view of the proceedings before the Commission, in which all parties participated under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found, petitioners having participated in that hearing without objection or contest, and the carrier plaintiffs, having in fact invoked the Commission's aid upon the point, are in no position now to seek injunctive relief against the named rate, but should, if the rate is deemed not just and reasonable per se, pursue their remedy before the Commission in appropriate proceedings available to them for that purpose.

Since we find upon the second point that while there is no evidence to support a finding, nor did the Commission [fol. 131] attempt to find that the rates were just and reasonable per se, there is ample evidence to support a finding that under the practice prevailing as to shipments to the ports a rate of 81 cents would be a just and reasonable rate to remove the discrimination existing under the two rate plan, it follows from what we have said, that no ground for injunctive relief exists; that the temporary injunction heretofore issued should be recalled, and that the bill should be dismissed for want of equity.

Houston, Texas, December 5, 1927.

[File endorsement omitted.]

[fols. 132 & 133] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, AT HOUSTON

Equity. No. 311

TEXAS & NEW ORLEANS R. R. Co.

vs.

THE UNITED STATES OF AMERICA

Equity. No. 310

ALEXANDER SPRUNT & SON, INC., et al.

vs.

THE UNITED STATES OF AMERICA

Consolidated

FINAL ORDER DISSOLVING INJUNCTION AND DISMISSING THE BILLS—Filed Dec. 5, 1927

Upon further consideration of these causes, it appearing to the Court that the plaintiffs are not entitled to any of the relief prayed for, and that the interlocutory injunction heretofore entered should be recalled and vacated, and that the bills should be dismissed for want of equity:

It is ordered that the interlocutory injunction heretofore issued in this cause on July 13, 1927, suspending the enforcement, operation and execution of the order on the Commission complained of in the above consolidated causes be, and the same is, hereby recalled and the stay granted thereby, is hereby vacated and dissolved and that the bills of the plaintiffs in the above styled and numbered causes be and they are hereby dismissed for want of equity.

New Orleans, La., December 2, 1927.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fol. 134] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR APPEAL AND ORDER ALLOWING SAME & FIXING BOND—Filed Dec. 31, 1927

To the Honorable Joseph C. Hutcheson, Jr., District Judge:

The plaintiffs, Alexander Sprunt & Son, Inc., Anderson, Clayton & Co., Houston Compress Company, Ship Channel Compress Company, Texas Farm Bureau Cotton Association, Turning Basin Compress Company, Weatherford Crump & Company and Intervenor Manchester Terminal Corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 5th day of December, A. D. 1927, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith and they pray that their appeal be allowed and that citation be issued as provided by law and that a transcript of the record proceedings and documents upon which said decree was based duly authenticated be sent to the Supreme Court of the United States sitting at Washington, D. C., under [fol. 135] the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

Fulbright, Crooker & Freeman, R. L. Potts, C. K. Bullard, James J. Shaw, Attorneys for Plaintiff.
R. C. Fulbright, of Counsel.

Dated this 31st day of December, A. D. 1927.

Appeal allowed upon giving bond as required by law for the sum of $250.00.

J. C. Hutcheson, Jr., Judge.

[File endorsement omitted.]

[fol. 136] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Dec. 31, 1927

The plaintiffs, Alexander Sprunt & Son., Inc., Anderson, Clayton & Co., Houston Compress Company, Ship Channel Compress Company, Texas Farm Bureau Cotton Association, Turning Basin Compress Company, Weatherford, Crump & Company, and intervenor, Manchester Terminal Corporation, respectfully specify as their reasons for appealing from the decree entered on December 5, 1927, the following assignment of errors:

Foreword

In the following assignments the term "plaintiffs" is used to cover both the original petitioners and the plaintiff intervenor, The Manchester Terminal Corporation. The term "plaintiff warehouses" is used to cover the warehouse and compress facilities which are located near the waterfront so that it is not necessary to use drays, or switching, in moving the cotton to ship's berth on the wharves, and which are controlled by stock ownership, or otherwise and, are used by plaintiff or any of them.

One

The Court erred in failing to declare the order of the Commission void in that said order arbitrarily commanded [fol. 137] that rates on cotton be increased without the question of the reasonableness of such increases being considered or put in issue and without any evidence upon the reasonableness of such increased rates.

Two

The Court erred in its failure to hold that the order of the Commission finding undue discrimination between uptown and the so-called waterfront warehouses at the respective ports and the shippers owning and using such facilities was void since both took exactly the same rate.

Three

The Court erred in its failure to find the order of the Commission void because it attempts to equalize commercial conditions not in fact equal, is based upon commercial instead of transportation considerations, and results in a confiscation of the property of petitioners for the benefit of the interior and uptown warehouses.

Four

The Court erred in failing to hold that the order of the Commission was void because it had no jurisdiction or power to forbid the common carriers defendant before it to refund to the so-called waterfront warehouses the cost of moving cotton from their warehouses and placing it in ship's berths adjacent to said warehouses, because said order would of itself create a discrimination against the so-called waterfront warehouses in that the uptown warehouse owners would get the blanket rate for the entire haul of their cotton; while the so-called waterfront warehouse owners would pay the same plus the cost of moving it to the wharves and into ship's berths and because the Interstate Commerce Commission is without jurisdiction and power [fol. 138] to require the carriers to practice a discrimination.

Five

The Court erred in its conclusion that the order of the Commission as to allowances was merely negative and furnished no matter for injunctive relief.

Six

The Court erred in holding that the present contention is purely academic and specilative because said holding is contrary to and unsupported by the evidence in this: The undisputed evidence shows that under the order of the Interstate Commerce Commission the advantages which are due solely to the advantageous location of the so-called waterfront warehouses are changed to actual disadvantages, and that the so-called waterfront warehouses which chose their locations as an aid to the handling of cotton

are actually penalized for their business foresight and that the plaintiff's contention in this case is a real and substantial question.

Seven

The Court erred in its holding that under Section 3 of the Interstate Commerce Act it is only necessary that the rate prescribed be "just and reasonable to remove the discrimination."

Eight

The Court erred in its interpretation of the Act to Regulate Commerce in that it held that the term "just and reasonable" when applied to an action under Section 3 of said Act means "just and reasonable for the purpose of removing the discrimination" as contrasted with the same expression "just and reasonable" when used in connection with an action under Section 1, of said Act, which the Court defined as "just and reasonable per se."

[fol. 139]

Nine

The Court erred in that it failed to hold that the Commission exceeded its powers by prescribing a specific rate without any hearing upon the reasonableness thereof and without evidence as to its reasonableness.

Ten

The Court erred in failing to find that the requirements of a full hearing in Section 15 of the Act to Regulate Commerce made necessary a hearing upon the reasonableness of the rates as a condition precedent to the power of the Commission to find that rates were reasonable or to order increased rates whether or not they should be found by the Commission to be reasonable and that no such hearing was held in the proceedings in question.

Eleven

The Court erred in failing to hold that as the domestic rates to the Ports had been fixed by the Commission after full hearing as "maximum reasonable rates" the Commission had no power to increase such rates without a hearing

upon the reasonableness of the increased rates nor to increase such rates merely upon a consideration of the reasonableness for the purpose of removing an alleged discrimination.

Twelve

The Court erred in its failure to hold that since the reasonableness of rates was not at issue the Commission had no power to prescribe the rates in question.

Thirteen

The Court erred in its failure to hold that since there [fol. 140] was no substantial evidence to support a finding that the rate prescribed was reasonable, the order went beyond the power of the Commission.

Fourteen

The Court erred in its holding that "there is ample evidence to support a finding that under the practice prevailing as to shipments to the ports a rate of 81 cents would be a just and reasonable rate to remove the discrimination existing under the two-rate plan."

Fifteen

The Court erred in failing to find that shippers of cotton to and through the ports could and in fact did avail themselves of both rates, the lower local rate and the higher export rate according as their convenience dictated.

Sixteen

The Court erred in that it failed to hold the order of the Commission finding unjust discrimination between plaintiff warehouses and the shippers owning and using them, and uptown warehouses and the shippers owning and using them, void as not sustained by the evidence since there can be no unlawful discrimination in view of the fact that the carriers maintain two bases of rates and services open to all alike, the one covered by export bills of lading and involving certain services and privileges, and the other covered by domestic bills of lading and involving a different character of services and privileges, and since the mere fact that for private and commercial reasons certain ship-

pers used one while others preferred the second could not render the maintenance of different rates for the different kinds of service unduly discriminatory as between the two classes of shippers.

[fol. 141] Seventeen

The Court erred in failing to hold that no unlawful discrimination had been shown between the rates applying on export shipments of cotton and rates applying on domestic shipments of cotton for local delivery at the ports, one being export or foreign commerce and the other being local or domestic commerce.

Eighteen

The Court erred in holding that petitioners could not seek the aid of the courts in preserving their rights, but, because of their participation in the proceedings before the Commission under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found, the petitioners were limited to remedies which might be available under later proceedings which they might institute before the Commission.

Nineteen

The Court erred in finding that all parties to these suits participated in the proceedings before the Commission under an order stating as one of the purposes of the hearing the arriving at a rate which would remove the discrimination found because such finding is contrary to and unsupported by the evidence in this: the undisputed evidence shows that the Manchester Terminal Corporation did not participate in any of the hearings before the Interstate Commerce Commission, and that it had been denied the right of a hearing before said Commission.

Twenty

The Court erred in its conclusion that the order of the Commission granting allowances to warehouses located away from the waterfront and the shippers using them in [fol. 142] lieu of transportation to and upon wharves and prohibiting carriers from making such allowances to ware-

houses near the waterfront and the shippers using them in lieu of transportation to and upon, near and adjacent to wharves, was merely a negative order and furnished no matter for injunctive relief.

Twenty-two

The Court erred in holding that for what plaintiffs have furnished other than transportation services they cannot recover in law, because said holding assumes that plaintiffs do not furnish any transportation services which the carrier is obligated to perform and because said assumption is contrary to and unsupported by the evidence in this: the undisputed evidence shows that under the terms of the carriers' tarriffs cotton may be stopped once in transit for the purpose of being concentrated under the protection of the through rate from origin to shipside and this privilege may be taken by the shippers at interior points or at the Ports. When the privilege is taken at the Ports, the terms of the carriers' tariffs provide that in lieu of the shippers requiring them to transport the cotton from the warehouses to shipside they will repay to the warehouses the cost of transporting cotton from said warehouses to shipside subject to certain maxima and the Court erred in failing to find that the so-called waterfront warehouses in pursuance to these tariff provisions transport cotton from said warehouses and place it in the adjacent ships berths in lieu of calling upon the carriers to switch said cotton from said warehouse to adjacent berths.

Twenty-three

The Court erred in holding that "it cannot make any legal difference whether the carrier performs a service continuously or after a stop for concentration allowed by its tariff or makes allowance in lieu, but only in lieu of trans-[fol. 143] portation," because said holding is contrary to and unsupported by the law in this: Under the law plaintiffs are entitled to equal and non-discriminatory treatment at the hands of the carriers and the practice of carriers and the Commission's order requiring the carriers to continue granting a transit privilege to interior and uptown warehouses whereby they transport cotton from interior points and uptown warehouses, their services in making delivery to said warehouses being complete, and later going

through the same service in transporting a similar quantity of cotton from said warehouses to and placing it in ships berths, but under the fiction that the movement is a through movement the carriers charge the shippers the shipside rate, or, in lieu of the carriers performing the second movement they allow and refund as in the case of uptown warehouses the cost of performing said service, but fail to grant and the Commission's order forbidding the carriers to grant a similar transit privilege to plaintiffs is unjustly discriminatory and unduly prejudicial to plaintiffs, and unduly preferential of the interior and uptown warehouses.

Twenty-four

The Court erred in its holding that the order of the Commission established one and the same rate to all warehouses located within the limits of the same switching district.

Twenty-five

The Court erred in that it failed to hold that the order of the Commission established a multi-rate plan to the same switching district under which the rate to each warehouse depended on its location with reference to the waterfront.

Twenty-six

The Court erred in holding that the only question for consideration was the rate established without regard to concentration privileges or allowances thereunder.

Twenty-seven

The Court erred in failing to find that the allowances [fol. 144] and privileges accorded by railroads at the ports in connection with shipments of cotton were part of the transportation service as described in the Interstate Commerce Act and necessarily were embraced in the order of the Commission undertaking to fix the rates and to regulate such services.

Twenty-eight

The Court erred in accepting the amount of the rate established as the sole index to the legality of the order and in refusing to consider the effect of the allowances permitted in diminishing the rate to uptown warehouses and the ship-

pers using them but prohibited to warehouses of plaintiff and shippers using their facilities, thereby depriving plaintiffs of the benefit of the free concentration privilege included in the rate in so far as it concerns cotton moved to ship's berth on wharves near to or adjacent to plaintiffs' warehouses.

Twenty-nine

The Court erred in that it refused to hold that the effect of the order of the Commission was to deprive the warehouses located near the waterfront, and the shippers using them, of the free concentration privilege on cotton moving to ship's berth on the near or adjacent wharves, which privilege is included in the rate prescribed, while allowing such privilege to warehouses in the interior and those located back from the waterfront, and the shippers using them.

Thirty

The Court erred in that it refused to hold the order of the Commission was discriminatory in that it granted allowances to back-from-the-waterfront compresses and the shippers using them for moving cotton which had not previously enjoyed a concentration privilege, except under a higher rate, to all wharves while refusing it to plaintiffs on cotton moved from their warehouses to ship's berth on, near, or adjacent wharves.

[fol. 145] Thirty-one

The Court erred in finding that large warehouses with compresses were erected on the waterfront at Houston, because said finding is contrary to and unsupported by the evidence in this: the undisputed evidence shows that the so-called waterfront facilities consist of two separate and distinct classes of facilities,—one of which is a transportation facility in the nature of a public wharf where goods are interchanged for delivery to or from steamship lines, and the other consists of cotton warehouses where cotton is stored and merchandised but each of which is separate from the other and none of said warehouses are on the waterfront; it being necessary as a prerequisite of delivery to steamship lines that cotton be transported from points in the cotton warehouses to and placed in the steamship berths, no part of said service being performed by the steamship lines.

Thirty-two

The Court erred in its failure to hold that since the shipside rate included delivery of the cotton, by the carrier, in the ship's berth upon the wharf, the movement of cotton from warehouses near the waterfront to ship's berth across adjacent wharves was a substitute transportation service regardless of the means of transportation, and that an allowance therefor to the shipper performing same was lawful.

Thirty-three

The Court erred in failing to find that the Commission erred in finding that the transportation of cotton from plaintiffs' warehouses to ship's berth upon adjacent wharves constituted intra-plant service and that no allowance could lawfully be made by carriers for any part of such transportation service.

Thirty-four

The Court erred in its statement that the plaintiff warehouses were erected, and are located, on the waterfront because such finding is not supported by the evidence in the [fol. 146] case.

Thirty-five

The Court erred in its statement that the railroads had inaugurated the two rate plan in order to equalize the uptown facilities using domestic rates with interior compresses using export rates because such finding is not supported by the evidence in the case.

Thirty-six

The Court erred in finding that under the practice of these ports shipside delivery consists in delivery to within 200 feet of the ship's tackle, because said finding is contrary to and unsupported by the evidence in this: the undisputed evidence shows that the steamship lines accept cotton only when it is delivered to and placed in steamship berths and that no part of the so-called waterfront warehouses at which cotton is stored and merchandised, forms any part of the steamship berths.

Thirty-seven

The Court erred in its statement of fact that the plaintiff warehouses and shippers can get their cotton to shipside 3½ cents cheaper than the interior and "uptown" facilities, and those using them, by using the domestic rate of 80 cents, because the undisputed evidence shows that the cost of moving the cotton from the warehousing facility to the ship's berth on the wharf facility is substantial, and in some cases greater than the cost of moving the cotton from uptown warehouses to the wharves.

Thirty-eight

The Court erred in failing to hold that the order of the Commission would deprive plaintiffs of the advantage of the location of warehouses owned or used by them, near the waterfront and penalize them therefor by permitting an allowance to uptown warehouses and shippers using such facilities for moving their cotton to shipside while holding it unlawful to grant such an allowance to plaintiffs.

[fol. 147] Thirty-nine

The Court erred in its failure to find that the granting of an allowance to the owners and users of uptown compresses and warehouses and its prohibition to the owners and users of plaintiffs' warehouses constitutes a confiscation of plaintiffs' property without due process.

Forty

The Court erred in concluding that the Commission had the power, in the state of the case presented by the record, to find a condition of undue prejudice resulting from the two-rate plan.

Forty-one

The Court erred in its failure to hold that the finding of the Commission that the relationship between the rates for city deliveries and shipside deliveries is unduly preferential of petitioners and unduly prejudicial to warehouses located at interior points and back from the waterfront, and the shippers using such facilities, is beyond its power because it is based upon commercial and other extraneous considera-

tions and not upon the services rendered by and the costs to railroads.

Forty-two

The Court erred in that it failed to hold the order of the Commission void as an attempt to equalize commercial conditions between various locations and merchants.

Forty-three

The Court, having found that in determining whether the rates established were discriminatory the only question for consideration was whether or not the rate was the same to all warehouses in the same switching limits, erred in not declaring the order of the Commission finding discrimination between the owners and users of uptown and waterfront warehouses void as based on commercial and other extraneous considerations since exactly the same rate applied to all.

[fol. 148]

Forty-four

The Court erred in that it failed to hold the order of the Commission void in that its order attempts to set up a system of rates based on commercial considerations which attempts to equalize the cost to varying persons and locations of getting to shipside without reference to transportation service or costs to the carrier.

Forty-five

The Court erred in its holding that if the owners and users of the so-called waterfront warehouses can have cotton delivered to their own warehouse facilities from which they can put the cotton to shipside it is no concern of theirs that the owners and users of an uptown warehouse get their cotton to shipside at the same transportation cost.

Forty-six

The Court erred in failing to hold that as the owners and users of all warehouses located in the same switching limit paid the same rate an order of the Commission finding undue discrimination between them was void as based on the cost to them of moving cotton to shipside.

Forty-seven

The Court having found that plaintiffs contributed nothing to transportation as such in building where they did, erred in that it failed to hold that the erection and use of their plants changed none of the transportation conditions surrounding the movement of cotton, but that only commercial conditions were changed and that these were not proper subjects for consideration by the Commission, and rendered its order void.

Forty-eight

The Court erred in that it failed to hold the order of the Commission void in that it disregarded additional services rendered export shipments under the export bills of lading.

[fol. 149]

Forty-nine

The Court erred in failing to hold that the Commission had no lawful power to compel the carriers to render without extra charge the additional services involved in transporting export shipments under export bills of lading.

Fifty

The Court erred in failing to hold that the Commission had no lawful power to compel the carriers to handle shipments moving under export bills of lading to shipside (exclusive of wharfage) at the same charge which was made for handling shipments under domestic bills of lading for local delivery to the warehouses at the ports, since the undisputed evidence shows that the shipments under export bills of lading involved additional services and privileges; such as additional free time, nominal demurrage charges, liberal average agreements, expedited movement, and miscellaneous services which were not required nor available under the tariffs covering shipments under domestic bills of lading.

Fifty-one

The Court erred in its failure to hold that the Commission had no power to prescribe a specific rate to remove an alleged unjust discrimination but only to enter an order in the alternative requiring the carriers to remove such discrimination.

Fifty-two

The Court erred in failing to hold that the 1920 amendment to section 15, paragraph 1, of the Act to Regulate Commerce did not confer upon the Commission power to prescribe a specific rate in cases of alleged unjust discrimination between shippers and localities under section 3 of the Act, but only in cases of destructive competition between railroads, and between railroads and water carriers.

[fol. 150] Fifty-three

The Court erred in holding that "if the rate established by the Commission is the same for all persons in the territory that is the end of the matter," because said holding is contrary to and unsupported by the evidence in this: the Commission required the carriers to accord one free concentration in transit privilege to the interior and uptown warehouses and also to the so-called waterfront warehouses in the cases where the cotton concentrated in said warehouses moved to wharves other than those adjacent to the so-called waterfront warehouses, or in lieu thereof it recognized the right of the interior and uptown warehouses to receive refunds from the carriers and required the carriers to pay said refunds, but denied the right of the so-called waterfront warehouses to receive and forbade the carriers to pay said refunds covering their cost of moving cotton from their warehouses to and placing it in ship's berths when this service was performed by the warehouses themselves or by other transportation agencies employed by them.

Fifty-four

The Court erred in holding that no ground for injunctive relief exists.

Fifty-five

The Court erred in holding that the temporary injunction heretofore issued should be recalled.

Fifty-six

The Court erred in dismissing the bill for want of equity.

Fifty-seven

The Court erred in its failure to hold that the temporary injunction should be made permanent.

Wherefore Plaintiffs pray that said decree may be reversed.

Fulbright, Crooker & Freeman, R. L. Botts, C. R. Bullard, James J. Shaw, Attorneys for Plaintiffs. R. C. Fulbright, of Counsel.

[fol. 151] [File endorsement omitted.]

[fols. 152-154] Bond on appeal for $250.00, approved and filed January 11, 1928, omitted in printing.

[fol. 155] In United States District Court

[Title omitted]

Affidavit of J. H. Tallichet—Filed July 14, 1928

Before me, the undersigned authority, on this day personally appeared J. H. Tallichet, to me well known, who deposes and says,

That he is a member of the firm of Baker, Botts, Parker & Garwood, Attorneys for the plaintiff Texas & New Orleans Railroad Company in the case of Texas & New Orleans Railroad Company, et al, vs. United States of America, and Interstate Commerce Commission, which was tried before the District Court of the United States of America, for the Southern District of Texas, Houston Division under the Court's Equity Docket No. 311; that all of the plaintiff Railroad Companies in the said Equity Docket No. 311, or their legally constituted officers were cognizant of the fact that plaintiffs in the case of Alexander Sprunt & Son, Inc., et al. vs. United States of America, and Interstate Commerce Commission, which was tried in the District Court of the United States for the Southern District of Texas, Houston Division under the Court's Equity Docket [fol. 156] 310 which was consolidated by order of the Court

with its Equity Docket 311, intended to take an appeal from the decision of said Court prior to the time the said appeal was taken and that the said plaintiffs in Equity Docket 311 decided not to appeal from the said judgment of the said Court and that said plaintiffs in Equity 311 have taken no steps whatever toward the perfection of an appeal from said judgment.

J. H. Tallichet.

Sworn to and subscribed before me by said named affiant, this 10th day of July, A. D. 1928. O. G. Kehrer, Notary Public, Harris County, Texas. (Seal of Notary Public, County of Harris, Texas.)

[File endorsement omitted.]

[fol. 157] In United States District Court

[Title omitted]

Affidavit of W. L. Cook—Filed July 14, 1928

Before me, the undersigned authority, on this day personally appeared W. L. Cook, to me well known, who deposes and says,

That he is a member of the firm of Andrews, Streetman, Logue and Mobley, Attorneys for plaintiff Beaumont, Sour Lake & Western Railway Company in the case of Texas & New Orleans Railroad Company, et al., vs. United States of America, and Interstate Commerce Commission, which was tried before the District Court of the United States of America, for the Southern District of Texas, Houson Division under the Court's Equity Docket No. 311; that all of the plaintiff Railroad Companies in the said Equity Docket No. 311, or their legally constiuted officers were cognizant of the fact that plaintiffs in the case of Alexander Sprunt & Son, Inc., et al. vs. United States of America, and Interstate Commerce Commission, which was tried in the District Court of the United States for the Southern District of Texas, Houston Division under the Court's [fol. 158] Equity Docket 310 which was consolidated by order of the Court with its Equity Docket 311, intended

to take an appeal from the decision of said Court prior to the time the said appeal was taken and that the said plaintiffs in Equity Docket 311 decided not to appeal from the said judgment of the said Court and that said plaintiffs in Equity 311 have taken no steps whatever toward the perfection of an appeal from said judgment.

W. L. Cook.

Sworn to and subscribed before me by said named affiant this 10th day of July, A. D. 1928. Louise T. Meinken, Notary Public, Harris County, Texas. (Seal of Notary, County of Harris, Texas.)

[File endorsement omitted.]

[fol. 159] In United States District Court

[Title omitted]

Order Granting Extension of Time to File Record—Filed Feb. 2, 1928

This cause came on this day to be heard on the petition of Alexander Sprunt & Son, Inc., Anderson, Clayton & Co., Houston Compress Company, Ship Channel Compress Company, Texas Farm Bureau Cotton Association, Turning Basin Compress Company, Weatherford Crump & Company, Plaintiffs and Intervenor Manchester Terminal Corporation, in the above styled cause, praying for an enlargement of time in which to file the record in this cause in the Supreme Court of the United States.

And it appearing to the Court that the record contains many exhibits and is a large record and that the plaintiff and intervenor ill hardly have time to file the same in the Supreme Court of the United States by the 13th day of February A. D. 1928 which is the time required by law and that opposing counsel have agreed thereto—

It is thereupon ordered, adjudged and decreed that the said plaintiffs and intervenor and appellants be and they are hereby allowed in addition to the thirty (30) days allowed them by law, Ninety (90) days from February 13th

[fol. 160] 1928 in which to file the record in this cause in the Supreme Court of the United States.

It is therefore so ordered, adjudged, and decreed this the 2nd day of Febry. A. D. 1928.

J. C. Hutcheson, Jr., District Judge.

[File endorsement omitted.]

[fol. 161] In United States District Court

[Title omitted]

Order Extending Time for Filing Transcript of Record to July 1, 1928—Filed May 8, 1928

For satisfactory reasons appearing to the court, and by consent of the parties hereto, the time for filing the record in this cause in the Supreme Court pursuant to the appeal sued out, is extended to the first day of July 1928.

Rufus Foster, Circuit Judge, by J. C. H., Jr. J. C. Hutcheson, Jr., District Judge. Louis H. Burns, District Judge, by J. C. H., Jr.

Consented to.

Fulbright, Crooker & Freeman, R. C. Fulbright, for Plaintiffs. J. Stanley Payne, for Interstate Commerce Com'n. Blackburn Esterline, for U. S. A. A. L. Reed, for Intervenors Arkansas Cot. Trade et al. C. B. Cochrane, Oklahoma Cotton Exchange et al. Mart H. Royston, for Galveston Chamber of Commerce et al.

[File endorsement omitted.]

[fol. 162] In United States District Court

[Title omitted]

Order Extending Time for Filing Transcript of Record—Filed June 22, 1928

For satisfactory reasons appearing to the court, and by consent of the parties hereto, the time for filing the record

in this cause in the Supreme Court is extended to the first day of August 1928.

Rufus E. Foster, Circuit Judge, by J. C. H., Jr. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, by R. C. Fulbright, for Plaintiffs. Blackburn Esterline, Assistant to the Solicitor General, for U. S. A. J. Stanley Payne, Assistant Chief Counsel, Interstate Commerce Com'n. A. L. Reed, Counsel, Arkansas Cotton Trade Ass'n et al., Intervenors. C. B. Cochran, for Oklahoma State Cotton Exchange. Mart H. Royston, for Galveston Chamber of Commerce et al.

[File endorsement omitted.]

[fol. 163] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD TO SEPT. 15, 1928
Filed July 28, 1928

For satisfactory reasons appearing to the Court, and by consent and agreement of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the 15th day of September A. D. 1928, and plaintiffs are granted permission to withdraw præcipe heretofore filed in this cause on the 14th day of July, 1928, together with narrative and proof of service.

Rufus E. Foster, Circuit Judge. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, by R. C. Fulbright, for Plaintiffs & Plaintiff Intervenors. J. Stanley Payne, for Defendant Interstate Commerce *Commerce* Com'n. Alfred A. Wheat, for the Attorney General, for the United States. A. L. Reed, Arkansas Cotton Trade Ass'n, Intervenor. C. B. Cochrane, Oklahoma Cotton Exchange. Mart H. Royston, Galveston Cotton Exchange and Board of Trade, Galveston Chamber of Commerce.

[File endorsement omitted.]

[fol. 164] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO OCTOBER 15, 1928—Filed Sept. 14, 1928

For satisfactory reasons appearing to the Court and by consent and agreement of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the 15th day of October, A. D. 1928.

J. C. Hutcheson, Jr., District Judge.

Sept. 12, 1928.

Consented to.

A. L. Reed, Counsel Arkansas Cotton Trade Ass'n. C. B. Cochran, Counsel Oklahoma State Cotton Exchange. Fulbright, Crooker & Freeman, Attys. for Plaintiffs. J. Stanley Payne, Ass't Chief Counsel, Interstate Commerce Com'n. Blackburn Esterline, Assistant to the Solicitor General, for U. S. A.

[File endorsement omitted.]

[fol. 165] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO NOV. 15, 1928—Filed Oct. 13, 1928

For satisfactory reasons appearing to the Court, and by consent of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the Fifteenth day of November, 1928.

Rufus E. Foster, Circuit Judge, by J. C. Hutcheson, Jr., District Judge. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, by R. C. Fulbright, for Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission. Blackburn Esterline, Assistant to the Solicitor General, for U. S. A. Okla. State Cotton Exchange, by C. B. Cochran. Callaway & Reed, by Carl B. Callaway.

[File endorsement omitted.]

[fol. 166] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO DEC. 15, 1928—Entered November 15, 1928

Ordered, that the time for filing the record in this cause in the Supreme Court, be extended to the 15th day of December, 1928.

(Telegram from Judge from Laredo, Texas, November 15, 1928.)

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN SUPREME COURT TO DEC. 31, 1928—Filed Dec. 13, 1928

For satisfactory reasons appearing to the Court and by consent of the parties hereto, the time for filing the record in this cause in the Supreme Court is extended to the thirty-first (31) day of December, 1928.

Rufus Foster, Circuit Judge, by J. C. H., Jr. J. C. Hutcheson, Jr., District Judge.

Consented to.

Fulbright, Crooker & Freeman, Attys. for Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission. Elmer B. Collins, Special Ass't to the Atty. Gen'l, for United States. A. L. Reed, Counsel for Arkansas Cotton Trade Ass'n et al., Intervenors. C. B. Cochran, Counsel for Oklahoma State Cotton Exchange. Mart H. Royston, Counsel for Galveston Chamber of Commerce et al.

[File endorsement omitted.]

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, L. C. Masterson, Clerk of the District Court of the United States, for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record, assignments of error and all proceedings had in the case, as called for in the Præcipe for Transcript on pages 1 and 2 of said Transcript, in the above entitled and numbered cause, as the same now appears on file and of record in my office, and that in accordance with the stipulation as to original exhibits, and the order thereon, which said order appears on page 952 of the Original Statement of Evidence, Vol. 2, the original Exhibits referred to in said stipulation accompany this transcript.

To certify which, witness my hand and the Seal of said Court, at Houston, in said District, this the 27th day of December, A. D. 1928.

L. C. Masterson, Clerk United States District Court, Southern District of Texas, by M. Anderson, Deputy. Seal United States District Court, Southern District, Texas.

[fols. 169-174] Citation, in usual form, showing service on C. B. Cochran et al., omitted in printing.

[fol. a] [File endorsement omitted]

[fol. 1] IN UNITED STATES DISTRICT COURT

In Equity. No. 310

ALEXANDER SPRUNT & SON, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Statement of the Evidence—Filed Dec. 17, 1928

This cause came on for hearing on July 12th and 13th, 1927, before the Honorable Rufus L. Foster, Circuit Court

Judge, Honorable J. C. Hutcheson, Jr., District Judge and Honorable Louis H. Burns, District Judge. The plaintiffs in Equity 310 were represented by their solicitors R. C. Fulbright and R. L. Batts; those in Equity 311 were represented by their solicitor, J. H. Talichet. The United States was represented by T. M. Logan Bruns, Assistant United States Attorney; the Interstate Commerce Commission by J. Stanley Payne, its Assistant Chief Counsel; the intervenor, the Galveston Chamber of Commerce and Galveston Cotton Exchange by its solicitor, Mart H. Royston; the intervenor, the Manchester Terminal Corporation by R. C. Fulbright; the intervenor Oklahoma City Cotton Exchange, by C. B. Cochran; the intervenors, Texas-Oklahoma Compress As-
[fol. 2] sociation and Arkansas Cotton Trade Association by its counsel, A. L. Reed.

Thereupon the Galveston Cotton Exchange and Galveston Chamber of Commerce sought and obtained leave of the Court to intervene through its solicitor Mart H. Royston. The Manchester Terminal Corporation having first obtained leave of the court, filed its intervention.

Offers in Evidence

There was offered and received in evidence the verified bill of complaint and exhibits A, B, C, D and E thereto together with exhibits marked 1 to 17 which were as follows:

Exhibit Nos. 1 and 2. Affidavits of James J. Shaw as to the issues and evidence before the Interstate Commerce Commission in Dockets 13991 and 14940.

Exhibit No. 3. An affidavit by W. L. Walker, Manager of Alexander Sprunt & Son, Incorporated as to damages.

Exhibit No. 4. An affidavit of W. L. Clayton of Anderson, Clayton & Company, which controls the Houston Compress Company, as to damages.

Exhibit No. 5. An affidavit of C. F. Stockmeyer, Secretary of Sprunt & Company, which owns the stocks of the Turning Basin Compress Company as to damages.

Exhibit No. 6. The joint affidavits of S. G. Reed, Assistant Traffic Manager of the Texas & New Orleans Railroad Company, and H. Booth, General Traffic Manager of the International-Great Northern, St. Louis, Brownsville & Mexico and other Missouri Pacific Lines as to issues and evidence before the Commission.

Exhibit No. 7. An affidavit by S. G. Reed containing testimony and exhibits from the record before the Interstate Commerce Commission in Dockets 13991 and 14940.

[fol. 3] Exhibit Nos. 8, 9, and 10, Affidavits of J. K. Moore relating to the issues and evidence before the Interstate Commerce Commission in Dockets Nos. 13991 and 14940, and in contravention of affidavits made by complainants as to damages.

Exhibits Nos. 11, 12 and 13. Affidavits of I. M. Griffin relating to the issues and evidence before the Interstate Commerce Commission in Dockets Nos. 13991 and 14940, and in contravention of affidavits made by complainants as to damages.

Exhibit No. 14. Petition for Modification of Order of Interstate Commerce Commission, Docket 11965.

Exhibit No. 15. Petition for Modification of Order of Interstate Commerce Commission, Docket 14940.

Exhibit No. 16. Supplemental Petitions for Postponement of Order of Interstate Commerce Commission in Docket 14940.

Exhibit No. 17. Petition for Reopening Dockets 13991 and 14940.

It was stipulated by all the parties that the cause be submitted on final hearing on the pleadings in the cause, the exhibits received in evidence and the certified copy of the transcript of the evidence before the Interstate Commerce Commission in its said Dockets No. 13991, Weatherford, Crump & Company v. Abilene & Southern Railroad Company, et al., and No. 14940, Application of Rates on Cotton to Gulf Ports.

Thereupon plaintiffs offered in evidence the certified copy of the transcript of the evidence and the exhibits offered in evidence before the Interstate Commerce Commission in said Docket Nos. 13991 and 14940, of which transcript the following is a condensed statement in narrative form:

[fol. 4] **Narrative of the Proceedings Before the Interstate Commerce Commission in Docket 13991**

WEATHERFORD, CRUMP & COMPANY, Complainants,

vs.

ABILENE & SOUTHERN RAILWAY COMPANY et al., Defendants

At Houston, Texas, October 24, 1922

[fol. 5] WITNESS JAMES WITHEROW

My name is James Witherow. I am Joint Freight Agent for the M. K. & T., I. & G. N., G. H. & H. Railroad Companies at Galveston. I have held that position about three years. My companies during the last two or three years have been receiving cotton which was ordered switched to the Galveston Wharf Company and delivered direct to the Shipside (R. 14) Density Compress Company located on the water front. Some of this cotton moved on through bills of lading, and some of it moved on local domestic bills of lading and was not marked export. At the present time, and during the last two years, there have been two rates to Galveston from Texas points, one authorized by the Railroad Commission to cover shipments for city delivery at Galveston, the other published and filed with the Interstate Commerce Commission to cover intrastate shipments. When bills of lading do not read for export, the State rate is assessed (R. 15). When shipments are billed on through bills of lading, for some foreign port the export rate would be assessed. If the domestic bill of lading would read for export, we would assess the interstate rate also (R. 16).

On a shipment that moved from Dallas to Pier 10 to the Shipside Density Compress, as compared with another shipment moving to the same pier but moving on a local bill of lading marked for export, there cannot be very much difference in the service performed, it would cost us more to handle the export shipment. Our switching rates on the export shipment would be the interstate or export [fol. 6] switching rate, which would be $4.05. That is the absorption switching rate, $4.05, as against the State rate which is at present $3.15. Switching is performed by the

Galveston Wharf Company, and the railroads (R. 17) would have to absorb that charge.

The demurrage regulations are more favorable to a shipper using the export bill of lading or through export bill of lading. On a through export bill of lading, the free time allowed is ten days, and on a domestic bill of lading reading for export, four days is allowed (R. 18). The shipper could take out a through bill of lading to the Continental point if he wanted to. The railroads have been absorbing the unloading charges at piers on shipments moving under the export category, and when the bills are properly supported we absorb that on state business, but we would not do that prior to October 1st or September 1st.

The actual physical handling is the same as far as the railroads are concerned, we have to pay out more and we have to give more attention and there is more labor attached in the handling of the through movement. I have no personal knowledge of what becomes of cotton delivered to the Shipside Density Compress (R. 19).

The rail rate is per 100 pounds, there are 75 to 100 bales in a car, the switching rate is so much per car, the unloading rate which we absorb at the piers is say 5½¢ a bale, so much a bale, and therefore it can all be reduced to so much per 100 pounds after all. I have not figured out the expense incurred on export traffic that is not incurred on domestic traffic. Taking into consideration the advantages that are gained by the demurrage application on [fol. 7] through bill of lading cotton, I would think it approximately 3½¢ (R. 20).

I have not personally made any attempt to find out what disposition is made of the cotton delivered to the Shipside Density Compress, because on local cotton delivered to a Shipside press we secure a receipt from a local institution as soon as we receive a receipt from some inland press representative. On cotton going to piers and on which we assess the export rate, we will not accept a receipt from any one else other than an authorized representative of a steamship company. If we have positive knowledge that a shipment was actually exported immediately, we would not attempt to collect the undercharge any more than we would on cotton delivered (R. 21) to a compress aways from the bay front, such as Moody's or Kempner's.

The actual platform of the Shipside compress has not much storage capacity, but the Galveston Wharf Company uses some of its pier space for storage, and it is possible that they store some of their cotton at piers adjacent to shipside compress.

Cross-examination:

During the period covered by this complaint the interstate switching rate of the Galveston Wharf Company was $4.50 per car. It is now $4.05 per car due to the reduction (R. 22). The Intrastate rate was $3.15, just as it is now. There was a difference of $1.35 in the switching, as against .90¢ now.

[fol. 8] WITNESS C. T. KENNEDY

My name is C. T. Kennedy. I am Local Freight Agent for the Southern Pacific Line at Galveston. I filled that position for six years (R. 23). The testimony of Mr. Witherow will apply in practically all cases to the shipments handled by our line. There are some differences with regard to demurrage charges. The demurrage on local shipments is progressive, while on exports it would not be. On a car of cotton for the Shipside High Density, after the fourth day it would have a $5.00 a day demurrage charge while it would be only $1.00 a day if for export. That would amount to possibly $20.00 difference on a car. We have two days free time on local business, and the charge is $2.00 after the second day, and $5.00 after the fourth day (R. 24), whereas, it is $1.00 a day after the free time on export business. We are handling considerable cotton at Galveston being delivered to the Shipside High Density Compress on which we are assessing the base rates.

Cross-examination:

At times there is considerable delay, and the difference in demurrage is a real advantage to the man shipping on the through (R. 25) bill of lading. That condition prevails on the other lines as well.

If we had absolute information that a shipment delivered on a domestic bill of lading was exported immediately,

I would take it up with the General Freight Agent or somebody about what rates we should assess (R. 26). When we get a receipt for the shipment delivered to a Shipside [fol. 9] Density Compress, we are put to no additional terminal expense and the switching charges are less and the cars are worth a good deal of money this time of the year. I never attempted to find out what became of the cotton that was delivered to the Shipside Compress, and I have no instances in mind where the rating was changed because it was learned that the cotton was in fact exported. Weatherford, Crump & Company had some cotton moved through the Shipside press and paid the undercharges, but the bills of lading read "for export" (R. 27), and we made delivery to the connecting carrier. The cotton never got out of the possession of the carriers at all (R. 28).

If a bill of lading did not say "for export," we assessed the domestic rate. If the shipper later told us that the shipments were actually exported and asked us to render an undercharge bill, naturally we would.

The demurrage rules favor the shipper on through bills of lading and also on local bills of lading for export.

WITNESS A. W. DUNHAM

My name is A. W. Dunham. I am agent for the Gulf, Colorado & Santa Fe Railway at Galveston, Texas. I have held that position since 1907, except for a year and four months. My company has delivered cotton to the High Density Compress (R. 30). Assuming that the traffic moves from Texas points, we charge the intrastate rate if it is billed locally or delivered to a Shipside Density Compress.

I have made no attempt to ascertain what disposition is made of the cotton delivered to the density compresses. [fol. 10] I do not recall that it was ever called to our attention that any of this cotton was being exported immediately or that we ever attempted to collect any undercharges. It might have been done (R. 31). Cotton delivered to Shipside Density Compress and cotton delivered — wharves adjacent thereto c-n be unloaded from cars placed alongside of each other upon the main track (R. 32).

WITNESS H. BOOTH

My name is Horace Booth. I am Traffic Manager for the International & Great Northern Railway. I have held that position about ten years. During the past three years my Company has been accepting shipments moving to Galveston delivered to the Shipside Density Compress on a city delivery rate. We have never attempted to follow the cotton beyond the high density compress. I do not know that we could collect the export rate if we had positive knowledge that the shipments were being exported immediately. We don't know what the intention of the shipper is when he takes delivery there (R. 33). If we had knowledge that it was his intention to export it, we would apply the export rate.

There are no cotton mills in Galveston. My line does not haul any appreciable amount of high density compressed cotton out of Galveston by rail. A good deal of cotton changes title at Galveston. I have no means of knowing whether or not cotton is sold there after reaching this compress or any other (R. 34) compress. We never attempt to secure information from the shipper that the cotton is intended for export. The shipper could get all those [fol. 11] charges back by paying the export rate and availing himself of the transit privileges—the refund. I don't see any alvantage or disadvantage to anybody in that arrangement (R. 35).

It is my opinion that all the cotton that is given a high density treatment on the wharf goes out by water. There would be no advantage in high-densitying cotton going to interior destinations. It would only be an additional expense (R. 36). There is a substantial amount of cotton of numerous shippers located at Galveston and in the interior of Texas whic- is concentrated on the premises of the cotton concentration company. They might reship that out of Galveston, and it might be exported to the Pacific Coast. In any of these cases the shippers take possession of the property and it is out of our possession (R. 37).

WITNESS ARTHUR H. FONDA

My name is Arthur H. Fonda. I am Traffic Manager of the Shipside Density Company, and have been since Sep-

tember, 1920. I have a general knowledge of the location of the six compresses located at Galveston. I presume it is a fact that for the last two or three years we have had two legally established rates to Galveston from interior points, one a city delivery rate and the other an export rate (R. 39). Cotton compressed by us at Galveston is handled in various ways. One is for immediate delivery to the pier, another is for loading into cars for shipments to New Orleans and San Francisco, another is for indefinite storage, another is for transfer of ownership. I do not know whether it is a fact that there is cotton being [fol. 12] billed to Galveston on city delivery rate which is being immediately delivered to various steamship lines after being compressed by our company. It is a fact that our company put out circular letters to the interior cotton shippers that by billing their cotton to Galveston on the local rate there would be a saving in the inland freight (R. 40). The advantages of the local rate vary at different times of the year. In the month of December I would tell the shipper that he would save about 3½ cts. per 100 pounds by letting us compress his cotton at shipside instead of letting someone else do it (R. 41). I mean someone else in the interior, at Houston for instance.

The compressing we do is given only for the purpose of moving the cotton ultimately by steamer to a foreign destination. A good deal of cotton is compressed at Galveston even when going to domestic destinations in the United States, for the purpose of doing patching in order that a shipper may secure the tare which is called for by the terms of his sale (R. 42). The compressing that we do, high density compression, is different from the compression at the intermediate points in the inland. We put the cotton down to about 34 pounds per cubic foot density, while in the interior at the Standard compresses the density is about 22½ pounds. The density at the gin is about 10 or 12.

The saving to the shippers of 3½ cts. per 100 pounds by shipping his cotton to us for compression is brought about by reason of the fact that we include in (R. 43) our compressing charge a price for delivery of the cotton at ship- [fol. 13] side and by the fact that we were willing to make delivery of his cotton at a price which is in line with the

cost of handling it, and that we make him a very attractive compress rate so that he can put the business to us.

I do not know what our competitors are charging for compression at Houston. The local rate from Dallas to Galveston is 80 cents. *The local rate from Dallas to Galveston is 80 cents.* I do not know whether that permits compression in transit at Houston (R. 44). Generally speaking we have nothing in mind upon which to base the statement that we can save the shipper 3½ cts. We do not act as the forwarding agent or export agent of the shipper.

Shipside delivery means placing the cotton within reach of the ship tackle. The cost of doing that is about 18 cts. per bale. Originally we figured that the shipper was paying us 22 cents a bale for delivery.

Approximately 85 percent. of the cotton that moves through our compress is ultimately exported. If cotton is compressed at Houston and exported through the same boat, I do not know what additional charges the shipper has to pay at Galveston above what we pay. (R. 46.) Some of the cotton we compress goes to San Francisco, some of it to New Orleans, some of it to the Carolina mills. Of the latter, some of it goes by water and some by rail, possibly fifty per cent. of it being exported through the port of Galveston.

The shipper pays the demurrage charges at Galveston on [fol. 14] shipments of cotton consigned locally for delivery to our compresses. (R. 47.) My company stores a limited quantity of cotton on our platforms, about 10 per cent. (R. 48). Generally such cotton is not stored very long, usually only over night for our own convenience. As soon as it is compressed it is delivered to somebody. (R. 49.) About fifty percent of it goes to the boat for export and the other goes to some other point. Substantial amounts go to the New England Mills by the coastwise line from Galveston. Generally we know what disposition is to be made of the cotton before it reaches Galveston. Some of our delivery to the ship is as much as 2½ miles, and I would think that our average delivery (R. 50) would be somewhere around a quarter of a mile. That delivery to some other dock is effected usually by drayage and by car. We have a per car switching rate. It is an intra-city switching rate. Our Company absorbs all of the switching charge, but we

consider the cost of delivery in making the charge which we make to the shipper. I do not know that our Company has ever made any charge to the shipper for storage on cotton exported.

At the present time we charge the shipper 18 cents a bale for delivery to the pier, which is substantially but not always exactly the cost of such delivery. In delivering to a ship at our own pier on which the compress is located, we generally use a hand truck, but sometimes we use drays. (R. 53.) The charge for that service on all the cotton we handle will average about 18 cents a bale. The shipper does not know this service costs him; all he sees is our bill for compression. If a carrier overcharged for the switch- [fol. 15] ing movement between our compress and the ship's berth, the shipper would not know anything about it. Since the First of September this year, it is true that our rate to the shipper is the same regardless of the fact whether the compressed cotton is delivered on the pier or whether it is delivered two miles away. (R. 55.) From November 1st, 1921, down to September 1st, 1922, we sometimes made an extra charge when we found it advisable to handle cotton by drays other than to attempt to handle it by immediate delivery.

WITNESS V. R. ASTON

My name is V. R. Aston. I am Assistant Traffic Manager of Weatherford Crump. I have held that position for the past year and a half. We, the complainants in this case, contend that the present rate situation in handling export cotton through the Port of Galveston through compresses located on the water front is both a discrimination as to location and as to rates, and violates thereby Section 1, 2, and 3 of the Acts to Regulate Commerce and has resulted in unreasonable public export rates from Texas points to Galveston. (R. 57.) This discrimination began during the year 1920, when the Galveston Wharf Company constructed six high density compresses adjacent to the various piers handling export cotton.

[fol. 16] ("Complainant's exhibit #1, Witness Austin" received in evidence.)

Exhibit #1 shows the location of the six high density Compresses, on the Galveston water front, the piers served by them, and the track number upon which cotton intended for these Compresses is originally ordered placed. (Record 58). Section A, the Press known as Pier 10, serves piers 10, 11, 15, 16, 18 and 21. There is a track on each side of the pier, so that cotton may be unloaded on either side. (Record 59). These compresses are located on the wharves of the Galveston Dock Company, and the carriers under the through rate to Galveston, make delivery at these piers. The Shipside Presses themselves order the cars placed on the different tracks. The cotton is consigned to the Shipside Density Compress from point of origin. (Record 60).

Between Compress "A" and Compress "B" there is a long stretch of wharfage. They have piers between the two, and if cotton is loaded to a ship at those piers, it would be necessary to move the cotton from Compress "A" or Compress "B". The distance between the two is about one mile and one-half. (Record 62). Each compress naturally serves the piers adjacent to it, but there may be exceptions, (Record 63), when there is a large amount of cotton to be handled hurriedly. (Record 64.)

The merchant shipping cotton from the interior to Galveston, has his own broker or agent at Galveston, who receives that cotton, as a rule, and attends to the placing of it. (Record 65).

Quite a number of cotton exporters throughout the State of Texas bill their shipments to Galveston on local bills of lading, consigned to themselves, their freight broker, or the Shipside Density Compress. That cotton usually moves standard compressed from interior points. When it arrives at Galveston it is immediately ordered switched di-
[fol. 17] rect to one of the six high Density Compresses and there compressed to high density of about 32½ or 34 lbs. per cubic foot. (Record 67). It is then delivered by the Compress as a rule to the various Steamship Lines. On shipments moving to Shipside Density Compress the shippers have been, and are now, paying the intra-state or city delivery rates. This rate at the present time from Texas common points to Galveston is 80¢ per 100 lbs. The ship-

per also pays a 2¢ wharfage charge. (Record 68). The shippers handling cotton in that way get an 82¢ rate to the Shipside. There is always a wharfage charge on anything going over the wharf. (Record 71).

During the early part of 1921 our attention was called to the fact that other cotton exporters were taking advantage of the intra-state city delivery rate on shipments moving to Galveston for export, and since the carriers refused to remove the discrimination, our firm decided it would also be just and reasonable for us to high density our export shipments in Houston and move same to Galveston upon the same intra-state city delivery rate in a high densitied condition, shipments to be unloaded directly to pier, although handled by the carriers at Galveston in the same manner. To deny this to us would be a violation of Section 1, and also of Sections 2 and 3. (Record 73). The carriers immediately advised us that it would be necessary for us to pay the published export rate, which was and is 3½¢ higher than the intra-state city delivery rate being paid by our competitor. We finally paid the undercharges on shipments as were billed by ourselves at the intra-state city delivery rate.

I offer in evidence a copy of a letter from Mr. Horace Booth, Traffic Manager of the I. & G. N. (Record 73). Shipments made by Weatherford Crump & Company were consigned to the Shipside Density Compress Company, and they took possession of the cotton as our Agent. (Record 74). Another part of the letter refers to cotton sent ship-
[fol. 18] per's order, notify D. Stuart Godwin. It was to be high densitied and loaded down at the pier. This letter is offered as Exhibit #2.

Exhibit #3 is another letter from Mr. Booth, dated June 18th, 1921, and has reference to a number of under charged bills on cotton which we moved through Galveston after it had been high densitied at Houston (Record 75) and shipped direct to the pier for export. The purpose of this is to show that we had to pay the inter-state rate.

Exhibit #4 is a letter dated January 13th, 1921, from Mr. D. W. McLeod, Auditor of the Santa Fe, which shows that the inter-state rates apply on our shipments that move to Shipside for export where we had the cotton compressed in transit at Houston. (Record 76). Mr. McLeod states in

this letter, that the domestic rates can only be applied when shipments are taken possession of at Galveston, or where they move to Galveston for high density or other consentration purposes. (This was objected to by Mr. Ross as an interpretation by the Witness, and the objection was noted).

These letters from Mr. Booth are conclusive evidence that the carriers have based their application of the intrastate city delivery rate on the fact that the cotton moves to Galveston standard compressed. (Record 77). It is our position that the rate we pay is unreasonable under Section 1. We pay under charged bills to all the rail carriers on all our shipments which have moved to Galveston under the intra-state city delivery rate, (Record 79) regardless of whether or not the shipments move direct to Shipside or to the high density compresses. There is absolutely no difference in the service performed on shipments moving [fol. 19] direct to piers as compared with the shipments moving to the high density compresses.

Exhibit #5 is to show the manner in which a car of cotton is handled coming to Galveston billed for immediate export, delivered at the pier, and the similarity of its handling to the handling of a car delivered to the Shipside Density Compress Company under the intrastate rate. (Record 80.) "A" represents a car of cotton from Texarkana, Texas, we will say, billed to Galveston for export. The rate you pay from Denison to Galveston, the export rate, being 83½ cents plus the 2 cent wharfage charge. "B" represents a car of cotton from the same point of origin billed on a local bill of lading to shipside density compress city delivery rate. Here the rate is 80 cents plus the 2 cents wharfage charge, making 82 cents. This exhibit merely shows that a car of cotton coming in at this compress on the export rate will be loaded direct to the pier and be under the intrastate city delivery rate, the cotton is unloaded there to the compress, and then direct from the compress to the pier. (R. 80-81) It now appears that the Galveston shipping interest and the (Record 81) carriers have accepted the intra-city delivery rate as the delivery rate on which export cotton for delivery to the Galveston Wharf Company to be placed at Compresses lo-

cated on the water front, while they are insisting that cotton not compressed on the water front at Galveston, should bear the published export rate, which is 3½¢ higher than the city delivery rate. (Record 82).

(The witness offered in evidence a circular letter sent out by H. L. Zeigler, an Ocean Freight Broker of Galveston, dealing with the handling of export cotton. The objection of Mr. Ross to this evidence was sustained.)

(A similar letter sent out by the Shipside Density Com-[fol. 20] press Company, was offered, and the objection also sustained).

Cross-examination:

The basis of my statement to the effect that the carriers [fol. 21] accepted as reasonable the intra-state rate fixed by the Texas Railroad Commission, is that the carriers would have made objections to it otherwise. I do know that the rate was put in under protest of the carriers at the time (R. 87).

The Weatherford Crump Company are complaining only in regard to shipments moving through compresses at the water front. Compresses back of the water front are not in issue at all. We have a compress at Houston, and we concentrate cotton at that point. We pay the 80¢ rate there. The compress at Houston is a high density compress and is located at the Shipside (R. 89). We concentrate cotton at Houston, and very often it is stored for considerable time before it is shipped out, because we may not need to ship that particular grade. The situation at Galveston is entirely different (R. 92). The cotton is classed and graded into several different grades at Houston, and usually goes out in 150 bale lots of a certain grade and a certain staple. I do not know whether the shipments that move to Galveston are graded and classed there (R. 93). The Weatherford Crump shipments were of a certain grade and class and there was nothing to be done to them at Galveston. If a bale was in bad order it would have to be reconditioned at Galveston (R. 94). A shipper would not assemble his cotton at that compress in Galveston.

We ship some cotton by boat from Houston (R. 95). We deliver it to the receiving shed by trucks. The Turning Basin Compress makes the delivery for us. I do not know

who owns that compress. We handle Cotton through it, as well as Spindler & Company and several other inland shippers (R. 96). A very large part of the business of that compress is Weatherford Crump business. We grade our cotton at the shed which belongs to the Turning Basin Compress Company (R. 97). On a shipment from the interior [fol. 22] to that compress, if the shipment was for export the export rate would apply, and if it was billed locally to the compress in Houston, the intra-state rate would apply. There is no difference to the rate situation in Houston and in Galveston (R. 100). The Texas common point rate applies to Houston and Galveston alike, up to within 200 miles (R. 101).

The distance from the compress in Houston to the side of the ship will average about 300 feet (R. 102). The average distance from the compress to the side of the ship at Galveston is much greater than it is from the compress to the side of the ship at Houston. Weatherford Crump & Company pay the domestic rate on Cotton concentrated at the high density compress at the Turning Basin, Houston, Shipside, from interior points, when delivered to vessels at that point. The Concentrater at Dallas shipping to the compress at Houston for compressing and reconditioning and delivery to the ship, would have to pay the export rate (R. 104).

WITNESS R. V. GILLESPIE

We are not attempting to raise any question as to the handling of cotton at compresses back of the water front at Galveston. We feel that there should be one rate on cotton going to the Galveston wharf for export and only one rate. We withdraw any part of our complaint which makes reference to the reasonableness of the (R. 107) rate under section 1. We attack the rate under section 1 as to the parity between the two rates (R. 108). Any cotton man is entitled to the special advantage of his location, as long as there is [fol. 23] no undue discrimination (R. 109).

On the shipments made by Weatherford Crump Company through Galveston, which were handled by the Shipside Density Compress, direct to ship, on which we paid the ex-

port rate, there may have been a possible refund for drayage, and we made application for those refunds in some cases, but did not get them paid. (R. 110). (R. 111). That cotton was not receipted for by our own Agent. I do not know to what extent shippers ship to Galveston on the local 80¢ rate and afterwards apply that cotton on transit and use the export rate. When the delivery to the Agent of the Shipper at the Compress, is merely a constructive delivery, the shipper is not entitled to the local rate. Some of our shipments that move through the Shipside Density Compress at Galveston, were billed down there on the domestic rate, and the carriers justified the application of the local rate on the fact that we took possession of this cotton. We did not take possession of cotton. The cotton was unloaded (R. 112) out of the cars and run through the compress and went on to the pier. The man who makes shipments to the Density Compress at Galveston knows 99% of the time that he is going to export it. The Commission should find out whether or not this is export traffic and if it is it should bear the export rate. The question of whether there is an actual break in the shipment or not should be determined. (R. 114). If a shipment comes to the Turning Basin Compress billed to Houston on a local bill of lading for compression to be delivered at Shipside, it should bear the export rate. We have not moved anybody else's cotton through there and used the city delivery rate as far as we know. We compress the cotton for the owner of the cotton, and it is in the possession of the Turning Basin Compress Company. (R. 115). The Compress is the agent of the shipper for the purpose of compressing, and it is a [fol. 24] port facility insofar as the Commission is concerned, because it is a part of a terminal. Less than one-tenth of one percent of any cotton is stopped at Houston to be reconditioned. The cotton is theoretically in the possession of the shipper through the Turning Basin Company. (R. 116). The shipment is in transit the entire time. It would come out of the car on a truck, and move through the compress on a truck and be a continual movement.

There never was a shipment of through cotton compressed at our plant. A check of last year's records show that every bale of cotton remained in that compress 16⅔ days. That is an average. We collect storage from the

owners of the shipments. (R. 118). (R. 119). If the Dallas Concentrator instructs us to compress the cotton and deliver it to Shipside, there is nothing to apply but the export rate. He has taken out his concentration privilege at the interior point, and we have taken out ours at the port. (R. 120). If the cotton originates at a compress point, and is standard compressed and assembled in lots and shipped to the ports, it is true that the shipper of that cotton would be at a 3½¢ disadvantage as contrasted with Weatherford Crump & Company. (R. 120.)

In regard to Galveston, it is true that the cotton has to be trucked or hauled to the ship's tackle. I do not know what the cost is from the interior presses. The Moody Press advertises that they will deliver to the Shipside free. (R. 121). As to the advantage the Weatherford Crump Company may have over the interior shipper, I would say that we are entitled to some advantage on account of our location, because we are at shipside. If the Shipside Density Compress people were handling their own cotton, I don't see that there would be any complaint. (R. 122). We handle some cotton through the Shipside Density Compress at Galveston. If we bought 100 bales of a particular grade of cotton at Hillsboro, an inland compress point, and wanted to export it through the port of Galveston, (R. [fol. 25] 123) we would bring it to Houston, compress it to high density, ship it out through Galveston, and pay the inter-state rate. If the man at Hillsboro made the shipment straight through Galveston for export, he would pay he same rate. The rate attaches on cotton on any form. If the shipper at Hillsboro shipped out his cotton in a compressed state, and had it density compressed at the compress on the w-arf, I understand that he would pay and is paying the intrastate rate (R. 124).

The case largely resolves itself into a question of position at the port. The Galveston Compress Company was not our agent in receiving the shipment we made to Galveston. Our cotton was not consigned in care of D. Stuart Godwin. Weatherford Crump Company did not receipt for the cotton for delivery to the high density compress. (R. 127). This cotton was billed to Galveston locally, consigned to the Weatherford Crump Company. (R. 128). I understand that the order for switching to their different presses is delivered to the railroad by the Shipside Densidy Com-

press Company. We bill our cotton to Galveston, our order notifyy the Shipside Density Compress, and they have authority only to compress the cotton and deliver it to the ship. (R. 129). In one way it is our cotton while in the hands of our agents, the compress. (R. 130).

MR. GILLESPIE

I testify that in my capacity of Traffic Manager for Weatherford Crump & Company, I have a general knowledge of the sales, and I personally checked the freight on these particular shipments, and know that the freight was paid by Weatherford Crump and no part of it charged to anyone. We alone bore the charges. (R. 131). We buy [fol. 26] cotton at inland points, and some of it at Houston, and ship it through Galveston. The local rate is applied to Galveston. We pay the local rate out of Houston and file the concentration claim (R. 132). The cotton we buy at Hillsboro concentrated there is bought f. o. b. Hillsboro. We sell the majority of the cotton which we buy at f. o. b. point of origin. We have the protection of the through rate to Galveston to the port of export. Since July, 1920, we have exported through Galveston approximately 100,000 bales. We pay the freight charges on 99% of it. (R. 133). Our actual claim is for damage to the extent of 3½¢ per 100 lbs. The people who export through Galveston and pay this local rate buy cotton at the same points we do. (R. 134). I do not know about the value of cotton at the interior points, but I do know that in making our sale abroad we haven't been able to use the local state rate in order to meet competition. Weatherford Crump & Co. could have had the same privilege of using any rate that was available, if we had wanted to move to Galveston to do business. (R. 136). All the rates published are available to all shippers of cotton. The cotton that I was speaking of was sold before it was shipped to various foreign centers. (R. 137).

WITNESS HORACE BOOTH

I am Traffic Manager for the International and Great Northern Railway; have occupied that position or a similar

one for the last ten or fifteen years. We deny that the service is identical on cotton delivered to high density compresses on the water front, on which the domestic rate is applied, and on shipments delivered to the vessel, on which the export rate is applied (R. 138). The export rate includes 2¢ per 100 lbs. wharfage, whereas no wharfage is in- [fol. 27] cluded in the domestic rate. The export rate includes $4.05 now, $4.50 during the period covered by this complaint, and there is only $3.15 on domestic traffic, for switching charges. The export rate includes a drayage of 22½¢ per bale, whereas the domestic rate does not include such a charge. The demurrage charges on export traffic are much more liberal than the demurrage charges on domestic traffic. The through bill of lading to a foreign destination saves in interest an amount equivalent in many cases to a much greater difference than the difference in the rate, and it involves an additional expense and additional responsibility on the part of the rail carriers. The export rate during the period covered by this complaint (R. 139) included an unloading charge of 5½¢ per bale, whereas the domestic rate did not include such a charge. These differences in service justify the present difference between the domestic rate and the export rate.

It has always been the practise to publish higher export rates than domestic rates to a port. Prior to 1917, the difference was represented by the difference in the wharfage, and in 1917 the carriers undertook to increase that difference to the extent of 3¢ per 100 lbs. The export rates on other commodities are frequently lower than the domestic rates. The basis for export rates, generally, is the lowest domestic rate available to any one port, applied through other ports, equalized through other ports (R. 140). That lowest domestic rate plus terminal charges through any one port applied through any other port is the basis. That was the basis on which the higher rate was fixed on cotton for export over the domestic rate.

Exhibit #6 shows the total number bales of cotton received at Galveston from all lines from August 1st, 1921 to July 31st, 1922, and the delivery made on same (R. 141). Seven per cent of the shipments moving into Galveston [fol. 28] moved to the high density compresses on the wharves, at the intra-state or city delivery rate, whereas 23.6 moved at the inter-state rate. This exhibit covers

cotton moving from points beyond the state of Texas (R. 142). Practically all of the 7% originated in Texas. Some cotton moved to Galveston from Arkansas and Oklahoma, and a small portion from Louisiana.

A good deal of service is performed in connection with issuing a through bill of lading, such as a confirmation of the ocean contract (R. 143), furnishing the shipper with many copies of an export bill of lading, distributing bills of lading at the port, etc. (R. 144).

Mr. Hershey: If the complainant will admit that there are many duties in connection with the through export bill of lading that are not necessary, on a local bill of lading, we will let that subject rest.

Mr. Gillespie: I will always admit anything that is right.

Mr. Hershey: That is right?

Mr. Gillespie: Yes sir (R. 144).

Witness Booth: On export cotton the carrier absorbs a [fol. 29] switching charge of $4.50 per car, whereas on domestic traffic, the carrier absorbs a charge of $3.15 a car. On export cotton the carrier absorbs a charge of 5½¢ a bale for unloading (R. 146). Carrier absorbs also a drayage charge of 22½¢ a bale on the same cotton.

When the domestic rate is applied we absorb only the $3.15 switching charge; we do not absorb the 22½¢ a bale. (R. 147). If the concentration had taken place under the high density we would absorb the same as we do any where else. We absorb switching into the concentration place, and also the movement out (R. 148).

This export cotton in times of congestion fills up the yards and causes blockades (R. 149). There is no delay in delivery to the high density compress on domestic rates.

Cross-examination:

Considerable cotton moves on export lading. There is considerable difference in the physical handling on the two kinds of cotton. Cotton which is consigned to vessels for export is frequently held in the outer yards for disposition, which involves considerable additional switching service (R. 150).

If orders were given before the arrival of the cotton, it would be possible to switch a car down there, unload half

of it on the left hand side on to the compress on which the city delivery rate is charged and the other half of it out of the other door on the pier on which the export rate is charged. At the same time the export rate would carry with it the additional privileges I have enumerated. I do not think we would ever have a mixed shipment of export and domestic in the same car (R. 151).

[fol. 30] WITNESS J. S. HERSHEY

I am General Freight Agent of the Gulf Colorado & Santa Fe Railway, headquarters at Galveston, Texas. I have occupied that position for nearly 20 years. Exhibit #7 is a copy of the Railroad Commission of Texas circular #401, dated March 16th, 1897, still in effect. The Galveston rates are applicable to and from delivery points on the Galveston Wharf Company's railroad. That does not include Shipside. It does include the high density compresses on the Galveston Wharf Company's railroad (R. 152).

In I. & S. Docket 837, 43 ICC 29, rates were authorized by the Interstate Commerce Commission for export on the basis of the Galveston Intra-state rate plus a figure higher than the additional terminal cost there necessary to make export deliveries. The unreported decision in 29 I. C. C. 732, Unreported #A-519, King Collie & Company et al. against the Abilene & Southern, rates on export cotton from points in Texas to Galveston, the Commission found not unreasonable rates for export 3¢ per 100 lbs higher than the domestic rates to Galveston.

On cotton delivered under the domestic rate at Galveston our troubles are over. On cotton delivered under an export bill of lading at the high density presses, we receive the receipt of the Steamship Agent, the connecting carrier, and we perform no further (R. 153) service with that cotton. I think it would be proper if cotton, in connection with the application of the export rate, might be concentrated at the high density presses and moved to a ship located at another pier in exactly the same manner as cotton would be moved from a so-called interior press to Galveston and moved to the pier (R. 155).

At the interior concentration point, such as Hillsboro, [fol. 31] cotton which had been ginned and compressed to a density of 10 or 12 lbs. per cubic foot, is there compressed to about 22½ lbs. per cubic foot for the convenience of the carriers. It is not the rule in Texas to pass a compress. The railroad pays for the compression—18¢ per 100 pounds. The shipper does pay the compress for certain merchandising services. The cotton is then delivered to the railroad either on a through export bill of lading, a bill of lading to the port for export, or a domestic bill of lading to the port. (R. 156). The rate on a shipment to the port for export, is the same as the rate on a shipment Shipside. You have two rates, but you have three forms of bill of lading. About the time of the war, steamship rates became very high, and a compress was developed that would compress cotton to 32½ lbs. per cubic foot. At the time of the Unreported Decision referred to, they had no such thing. Under the rates of the steamship companies, it is profitable to compress the cotton to high density. There are very few of these high density compresses in the interior. (R. 157). They now have them at Texas City, Galveston and Houston, and one is being constructed at Aransas Pass.

WITNESS J. D. MARTIN

I am Chief Clerk in the Division Freight Office of the Santa Fe Railway at Fort Worth, Texas. I have been in that business eight years. I had a number of years railroad experience prior to that time (R. 158). On a bill of lading for 100 bales of cotton from Ft. Worth to Liverpool, England, we wire the General Freight Office, giving particulars as to the ocean contract and rates, and asked that that be confirmed. That is a contract previously made by the shipper with a steamship agent at the port. That requires a 50 word message. We must then receive a tele- [fol. 32] gram from the General Freight Office, telling us that the contract has been confirmed by the Steamship Agent, and then we have authority to sign the bill of lading. We then call the compress companies (R. 159) and secured the lading on this cotton, getting the car numbers and condition of the cotton. We must make out and sign

ten or twelve copies of the bill of lading, and then affix a form of validation and the office stamp. We then call the shipper by telephone and tell him that the bill of lading is complete and he sends for it or we send it to him by the Porter and keep two copies for our office records. The cars are placed at the compress before his documents are made up (R. 160). Box car equipment is ordinarily available at the compress because we are moving flat cotton in and compressed cotton out.

From the two office copies of the bill of lading, we are required to make eight more. (R. 161). Two copies for the Steamship Agent, one copy for the general freight office, and one copy to the export agent. We thus make an average of 20 copies all together.

As a rule the charges from point of origin to destination are prepaid on cotton moving under an export bill of lading. Usually we collect at the interior points of origin, not only our own freight charges to the port but also the ocean freight charges. (R. 162). That makes our office responsible for a great deal of money. In some cases these confirmations designate the policy in which the cotton must be shipped from the interior. We have bills of lading calling for shipment on a specified Steamer. The confirmations are usually one of three classes, prompt shipment, meaning within ten days, immediate shipment, (R. 164), meaning within one or two days or so, or stating a date on which the shipment must be at the port. The railroad must see that the cotton moves. We do not have that duty in con- [fol. 33] nection with domestic shipments to the port.

The export bill of lading does not show the date on which it is to sail. (R. 165). The contract between the owner of the cotton of the Steamship Agent, and the owner of the Steamship, sometimes specifies the identical Steamer, but ordinarily it calls for "Early November Steamer Shipment" or similarly. If they can't load in one they load in the next one that may go 15 or 20 days later. (R. 166). It is frequently necessary in giving information to an Agent at Gainesville, for instance, to use the long distance telephone. We have discontinued the practice of issuing the export bill of lading for a shipment moving from Gainesville. Gainesville would issue the bill of lading, but I may have the particulars on it and have to confirm the charges.

(R. 167). I have never been requested to exchange a domestic bill of lading for an export bill of lading. At present we issue through bills of lading only at compressed points.

Cross-examination:

The ocean rate now runs from 40¢ to 50¢ per 100 lbs. and on a shipment of 100 bales of cotton, we would collect $250.00 or $300.00 ocean charges for the Steamship Company. (R. 168). We have lots of shipments billed to Galveston on local ladings or which we collect the domestic rate. I don't know what is the intention of the shipper to do with it.

WITNESS E. M. WARRENBERGER

I am District Freight and Passenger Agent for the I. & G. N. at Galveston. I have held that position two years and eight months. Most ocean contracts at Galveston are confirmed through line wires, telegraph, others by Western [fol. 34] Union and again long distance, and occasionally the Steamship Companies telephone direct on ocean contracts. Our messenger boy brings the line wire messages from the local freight office to us during the day, and we immediately get in touch with the Steamship people, and get the ocean rate from them. The difference between high density and standard at the present time is 15¢ per 100 lbs. Then we issue a wire and send it back to the local office by a messenger boy. Our local office is located possibly 13 blocks from our office. (R. 170).

Exhibit 8 is a form which we fill in to confirm the ocean contracts with the Steamship Agent. It is filled in by our stenographer and the messenger boy takes them over to the different Steamship Companies for their signature, and later on we receive the bills of lading from the Agent at the point of origin which is sent to the different Steamship Companies. They are assorted in our office and then taken out by the messenger boy to the different Steamship lines. We usually receive about six copies.

On domestic cotton we have no trouble at all. We hardly know that the shipment is coming in until it reaches Gal-

veston. On the through bill of lading, the ocean freight charges are usually paid, and this makes necessary that our local agent draw up a regular statement to the Steamship Company and a draft paying them the ocean charges. We draw that draft when the bill of lading is completed, possibly a week, sometimes two days, after the money is collected. Sometimes the Agents have to draw a draft on the Treasurer to pay these charges when short of funds. We keep a file of our ocean contracts in our office (R. 172). [fol. 35] We make out the confirmation and let the Steamship man sign it. We do not have that to do in connection with the shipments moving through the high density compress.

Cross-examination:

This method of handling applies only on shipments moving on through export bills of lading, and has no reference to shipments moving on local bills of lading (R. 173).

WITNESS J. F. GARVIN

I am General Freight Agent of the M., K. & T. Railway Company of Texas. I concur in the testimony of Mr. Booth and Mr. Hershey in every respect (R. 174).

WITNESS J. L. WEST

I am Manager of the Transportation Bureau of the Dallas Cotton Exchange. Before that I was in Railroad and Traffic business for about thirty years. I represent the interests of the members of the Dallas Cotton Exchange, about 75 in number, who ship in the course of a season from 1¼ to 1½ million bales of cotton. In connection with the Houston Cotton Exchange, they probably ship 75% of the cotton produced in Texas. They concentrate and ship through Houston and Galveston in an ordinary season possibly 600 or 700,000 bales of cotton (R. 175). They ship on both export and local bills of lading, and the same shipper uses both kinds. Our interest is to preserve (R. 176) the present relationship.

The export rate from Texas common points to Galveston [fol. 36] is 85½¢, 5½¢ more than the local rate. Two cents of that is wharfage charge, and the export rate is really only 3½¢ more than the local rate. I cannot concur in the testimony of the railroad to the effect that the services on export shipments are greater than on local shipments, because I have not the information, but I believe that all they have stated is substantially correct. (R. 177). On page 20 of Fonda's I. C. C. #135, item #200, shows that the rate found in Item 400 may be applied to Galveston on cotton moving there for concentration, and thus that the 80¢ rate is not only an intra-state rate but also an inter-state rate. Some of our shippers ship to high density compresses on the Galveston wharves, and we claim that the 80¢ rate is a legal rate for that shipment. Cotton that is sent to the high density compress is concentrated cotton just as much as that concentrated at the Turning Basin Compress in Houston, or at Dallas, or at any other point in the interior where there is a compress or warehouse. (R. 178). We bring it to the high density compress at Galveston for the purpose of concentrating it and reshipping it just as we do cotton shipped to other places. Some of it goes out on ships to foreign ports, some of it to New Orleans, for movement to the Southeastern states or New England, some of it to San Francisco, etc. We pay the high density compress 72½¢ a bale for its services, and we get a rate from the Steamship which is 15¢ per 100 lbs. less than the rate on standard compress cotton (R. 179) thus we save about 6¼¢ on a 525 lb. bale of cotton. That is the reason we send the cotton to the high density compress. The advertising matter of the Shipside High Density Compress Company states that that saving is 7¢. I place it at 6¼¢. They also state that the shipper saves 3½¢ per 100 lbs. by ship- [fol. 37] ping on local bills to the Shipside Compress, but they do not state the fact that when they move the cotton from the compress to the ship it costs 18¢ a bale. As a matter of fact it really costs as much money to move cotton from the interior to shipside through the density compress as it does to move it direct to shipside without going through the density compress (R. 181).

There is another kind of cotton that moves to Galveston on a local bill of lading, without the words "for export"

on the bill, consigned to the shipper or his agent, that does not go to the high density compress at all. It goes right to the ship, just the same as cotton moving on a through export bill of lading does, and it is in fact export cotton, and the carriers assess on that cotton the export rate as they should. The services the carriers perform on this last described kind of cotton, of course, are less than on the cotton moving on the through export bills of lading, but we have no objections to them earning a little bit more on that if they can. It is so important to us to have these rates equalized that we are willing to pay them even a little out of proportion to the service they perform. (R. 182).

On the cotton that goes into the shipside density compresses, and is later moved to the ship, the price we pay the density compress for its service does include the cost of delivery to the ship. We have the privilege at Galveston, as well as at Houston and Texas City, of asking for the transit privilege and requiring the carrier to assume the expense of moving the cotton from the compress to the ship, and their tariff published that they will refund us 22¢ per bale. We have to pay the export rate of course when we do that. (R. 183). The refund of 22¢ per bale is [fol. 38] just about as much as the difference between the two rates, and ordinarily we do not bother with it. (R. 184). I think 3½¢ is about ½¢ too much in the difference, but we are not going to complain about it. It is important to us that all shippers be kept on an even field, and that all the ports should be kept on a parity, with the interior concentrating points, and we have that now just about as near as is possible. If the railroads should make 83½¢ the local rate, or 80¢ the export rate, or adopt some intermediate figure and make it apply for both, that result would not equalize. It would compel the man who shipped down there locally and bears the expense of moving the cotton from the local points to Galveston Shipside, to pay more than the man who uses the export bill. (R. 185). The man who is located beyond the wharf and is not adjacent to it, would have a greater expense than the man who concentrates there and ships direct. At Houston all of the compresses and warehouses except the complainant's would be placed at a very great disadvantage. The com-

plainant would be excepted because his compress is situated 300 feet from the ship. (R. 186). There is no distinction except his distance from the ship. One has to move to a ship three miles, and the other 300 feet. The complainant would have the best of everybody if the rates were equalized.

The present adjustment is different somewhat from what it has been since August 26th, 1920. There has been a greater difference between the export and the local rate, (R. 187) and some of the traffic involved in this complaint doubtless moved during the period when there was a greater difference, but practically the differences and advances and reductions have always been equal to what it costs the owner of the cotton to move it from the concentration place at Galveston to the Shipside. The difference [fol. 39] at one time was 6¢, plus the 2¢ wharfage charge, but at that time the cost of moving the cotton from the concentration place to Shipside was greater. Drayage was as high as 30¢ a bale. One large concentrator at Galveston has a contract with dray companies to dray cotton when destined to piers west of 25th street at 18¢ per bale; to piers east of 25th street at 20¢ per bale, with the condition that if they give the dray line 20,000 bales a month the rate is 18¢ to all piers. Two of the compresses operate their own drays. When they are obliged to employ dray lines because of a larger business than their own drays can handle, they pay we understand 24¢ and 25¢ a bale. Other concentration places, one of which is on the dock, pay 17½¢ a bale. It is fair to say that the average cost for all is 18½¢ per bale. There is an equalization today, but if this complaint prevails there will not be an equalization. I have nothing to offer as to the reasonableness of the rates, except may be that they are a little too high, but we are not complaining about that (R. 190).

Weatherford Crump & Company could have gotten the refund on the shipment on which they called upon the railroad to assess the export rate. Some of our members use both export bills of lading. The through bill and the local bill for export. An individual member might use both in a week's time. (R. 191). The through bill is the desirable document, it saves us money. Some foreign purchasers are willing to take cotton a through export bill of lading

at Dallas. Others insist on what is called a shipped bill of lading, indicating that the cotton has been placed on the ship when the document is signed. That is largely a matter of sentiment or custom or lack of faith in the shipper. Some spinners in Europe cannot believe that the cotton has been shipped unless it is on a ship. (R. 192). I never [fol. 40] knew of a different rate being in effect for the through bill of lading from that for the domestic bills for export. The shipper using the "For export rate" has available by law, if he wants it, the other document, the through bill, that is issued by the railroad by greater effort than domestic bills of lading. (R. 193).

Some of our members ship on local bills of lading to the Shipside Press, some ship on local bills to the port for export, some ship on local bills to the port without any destination shown, some ship on through bills of lading. Some do all four. If there was a saving of 3½¢ per 100 lbs. by using high density presses, they would all ship that way, and there would be more than 7% of the total receipts at Galveston handled through the high density pressers. (R. 194).

WITNESS A. S. L. TOOMBS

I am Agent for the Southern Products Company at Galveston, and Manager of the Southern Products Company warehouse. We own our own press and warehouse at Galveston. In the last seven years we have averaged 100,000 bales a season through our compress and warehouse, and we have handled as high as 225,000 bales in one season. (R. 196). The rates should properly be lower for domestic delivery than for export Shipside delivery. It costs us at present a little more per bale to transport our cotton from our warehouse to Shipside than the difference in the rate allowed. It costs us from 18¢ to 20¢ per bale, and on the average weight of cotton I believe that the difference between the rate is not more than 17½¢ per bale. If the rates were made the same, we would be at a disadvantage because the people at Shipside would be able to get their [fol. 41] cotton right at the ship where we have ours a mile and one-half to two miles away from the ship. (R.

197). We would also be at a disadvantage with the interior concentrator. There never has been a time since we have been in business in Galveston when the difference in the rate more than paid for the difference in drayage alone. We are not located on the wharf.

WITNESS F. R. DALZELL

I am Traffic Manager of the Houston Cotton Exchange. I have been in that position about two years and one-half. (R. 198). Prior to that I was General Freight Agent for the Gulf Colorado and Santa Fe Railway Company. I represent the Houston Cotton Exchange, consisting of about 75 members, among which there is the ownership of 16 compresses and warehouses which have a capacity of not less than 500,000 bales. From August 1st, 1922 up to October 23 there had been received into the compresses and warehouses at Houston 781,858 bales. There are in stock in Houston warehouses and compresses today 392,556 bales. Houston exported last season 478,000 bales, and so far this season we have exported 193,000 bales. (R. 199). In our opinion it would very seriously damage the cotton industry throughout the Southwest to destroy the important spot markets that have grown up at Houston and Galveston, whose existence would be impossible under the handicap of equalized rates suggested in this complaint. If the rates were made the same, the concentrator at Houston and Galveston would simply be at a disadvantage to the extent of the cost to him of moving his cotton to the Ship. The complainant would be the only one to benefit. If the principle were established at Houston, the complainant would have to pay 83½¢ instead of 80¢ as he now pays. But his competitors would have to pay the same rate, and [fol. 42] he would still have the same advantage there. (R. 201). His advantage would be the difference between what it cost him to get to the ship and what it cost the others. He is 300 feet from the ship and the others are 200 or 300 miles.

I adopt all of the testimony of Mr. West. The Ship Agents are now discussing the proposition of reducing the difference in the ocean rate in favor of high density com-

press cotton to 10¢ instead of 15¢. If that is done, there will be a loss to the shipper (R. 202), and I anticipate that this moving into the high density compresses, perhaps, will almost entirely stop. The movement into the high density compresses is solely to get the benefit of the better ocean rate.

I was with the Santa Fe Railroad 15 years, and I am familiar with the production of cotton in Texas. It ranges from two and one-half million bales per year upward. (R. 203). Oklahoma ranges around a million bales, 800,000. The cost of concentration has been so equalized by the carriers that the expense of concentrating at the nearest concentration point, or at Houston, or at Galveston, is practically the same in the final cost. If there were any considerable advantage in any one particular method, the whole lot of cotton would follow that line. That would overload that particular channel. (R. 204). It is an advantage to have as many ways of doing this business as possible, so that all channels may be employed.

WITNESS I. M. GRIFFIN

I am Traffic Manager for Geo. H. McFaddin & Bro. [fol. 43] Agency, Waco, Texas. I was formerly with the Texas & Pacific Railroad. I was first with the International & Great Northern Railroad for ten or twelve years, then with the T. & P. in various capacities, and finally as General Freight Agent and Freight Traffic Manager, and then I took my present position. My firm owns large concentrating warehouses and compresses at Galveston. During a season it would handle from 200,000 to 300,000 bales through those warehouses and compresses. The rate on cotton for export or Shipside should be higher than for domestic delivery, because the shipper incurs expense in making the final delivery or disposition of the cotton if he ships on the local rate. That expense approximates the difference between the two rates. (R. 206). As a local concentrator, we find that we have no advantage in exercising the privilege of local concentration. If the same rates were applied for local delivery as for Shipside, we would be at a disadvantage. I was with the I. & G. N. at the time of

the hearing of the King, Colley case when the present rates were established to Galveston for export, (R. 207) after the Texas Railroad Commission had reduced the intra-state or local rates, a readjustment followed. The difference of 3¢ between the two equalized the local with the export rate. I affirm Mr. West's testimony. (R. 208).

WITNESS E. H. THORNTON

I am Traffic Manager of the Galveston Commercial Association and the Galveston Cotton Exchange and Board of Trade. I appear in support of the present adjustment. My exhibit 9 is an excerpt from the Commission's decision and what was known as the Louisiana Cotton Case, I. & S. Docket 955, 46 I. C. C. 462, in which the Commission approved higher rates for export than for domestic delivery [fol. 44] at the port of New Orleans to the extent of 3¢ per 100 lbs. That difference formerly prevailed at Galveston, but it has been increased by the Director-General and the Interstate Commerce Commission in Ex Parte 74 (R. 209) and the 10% reduction bringing it back down to 3½¢. J. H. Glenn's Cotton Tariff I. C. C. A-293, which gives export rates on cotton, or rather rates on cotton from the southeastern states, and the Mississippi valley, to the Gulf Ports and the South Atlantic Gulf Ports, provides for rates approximately 5¢ higher on export cotton than on domestic or local delivery cotton. Mr. C. S. Fay's Cotton Tariff I. C. C. #5, provides that the rates to Shipside New Orleans for export shall be 4¢ per 100 lbs. higher for domestic delivery, and it seems that this is almost a universal practice. (R. 210). I do not know whether the export rates to Boston or Philadelphia are higher than the local domestic rates. Those ports are not cotton ports like the southern ports. At practically all the southern ports, there are local concentrators who utilize the facilities which they construct themselves or which they rent at the ports. It is largely for the advantage of the concentrator at the port, in order to preserve his advantage of location, that this equalization is in effect. (R. 211). This equalizes him with the man in the interior, who can get his freight to Shipside for 83½¢. The man at the port has to pay 80¢ plus the ap-

proximately 3½¢ per 100 lbs. more to dray it or transfer it to Shipside.

In explanation of Exhibit 5, the question was raised as to the difference between the export and the local rate on cotton from Oklahoma. The Galveston and Houston Cotton Exchanges in a formal complaint before the Commission in Docket 11,965 requested that the export rates on cotton [fol. 45] not only from Oklahoma but from Arkansas and Louisiana to Galveston and Houston be made 5¢ per 100 lbs. higher than the local delivery rate, and we are waiting for the final decision in that case to line up the Arkansas, Oklahoma and Louisiana export cotton rates, so as to remove this discrimination now existing (R. 212) against the local concentrator.

Note 2, page 45 of Mr. Glenn's Tariff shows that the rate for export to the various ports named, which includes eleven ports beginning with Norfolk, Virginia and ending with New Orleans, Louisiana, shall be 5¢ higher than the rates to the port. The North Atlantic ports usually don't handle any cotton from this company billed through to European destination. (R. 213). The rate on cotton now from Galveston to European destination averages about 50¢ per 100 lbs. From Galveston to New York via the Mallory and Morgan Lines, it is 35¢. Consequently, except where the rate cuts no figure, it would not be possible to move cotton from Texas to European destination through the port of New York. If the movement was undertaken all rail, the through rate to European points would probably be three or four times the rate via the Gulf ports. New York and Boston do not export a great deal of cotton. Savannah could take care of the Carolina territory, Savannah and Norfolk. (R. 214.)

Mr. Booth:

My Exhibit #6, showing 971,576 bales of cotton moved on local billing to inland compresses refers to cotton moving to the compresses located away from the water front at Galveston.

[fol. 46] **Narrative of the Proceedings Before the Interstate Commerce Commission in I. C. C. Docket Nos. 13,991 and 14,940, Railroad Commission of Texas #2256**

#13,991

WEATHERFORD CRUMP & COMPANY, Complainant,

vs.

ABILENE AND SOUTHERN RAILWAY COMPANY et al., Defendant

#14,940

APPLICATION OF RATES ON COTTON TO GULF PORTS

#2256

COTTON RATES ON TO TEXAS PORTS, WATERSIDE CONCENTRATION

vs.

CONCENTRATION BACK FROM THE WATER FRONTS

At Houston, Texas, October 22nd, 23rd, 24th, 1923

WITNESS LAWRENCE B. McCORD

I am special agent for the Interstate Commerce Commission. I have held that position about four years. (R. 12). I was Examiner in the Bureau of Accounts for about nine years. I had seven years with the Burlington Railroad in various capacities, mostly with tariffs and the application of rates. Prior to that I had 19 years experience in transportation with the Adams Express Company.

There are two warehouses and Compresses in Houston that can truck their cotton by hand from the compresses to the ship tackle. They are owned by Weatherford Crump & Company and Anderson Clayton & Company. (R. 13). The compress of Weatherford Crump & Company is known as the Turning Basin Compress. It handled 88,811 bales last season. By last season we mean the cotton season from August 1st, 1922 to July 31st, 1923. There are ten compresses and warehouses in Houston located back from the water front which are obliged to move their cotton by truck,

barge and rail switch movement to get it to the Shipside. [fol. 47] They handled 1,237,472 bales last season. The net receipts for Houston as compiled by the Houston (R. 14) Cotton Exchange were 1,377,557. The aggregate number delivered to all Houston compresses was 1,326,283. The difference between the two, 51,274, represents approximately the number of bales of cotton for last season which moved through to Shipside, and on which the export rates were applied. It represents about 3-7/10 per cent of the total number of bales received in Houston which was 1,337,-557 bales. (R. 15). The local consumption of cotton in Houston is very small. There are no cotton mills in Houston. The Board of Trade figure is less than 3/10 of 1%.

Cotton exported from Houston to foreign countries last season amounted to 719,942 bales. 3,680 bales were shipped in coastwise movement. In investigating this case, I interviewed the local agents of the various rail lines which hauled cotton into Houston. The practice of the carriers is very uniform. On a shipment moving on a through bill of lading they apply the (R. 16) export rate. On a shipment moving on a local bill of lading, with the notation "for export" they deliver it to Shipside and also apply the export rate. On shipments consigned to compresses, they apply the local rate. On shipments moving in at the local rate to a compress and later exported on which they assume the cost of transfer from the compress or warehouse to the Dock, they apply the export rate and absorb the cost of transfer. I find no evidence that the carriers attempt to police the cotton which they move from compresses to shipside to see whether the rate should be raised to the export rate, except what might incidentally be done in handling concentration claims, or claims for adjustment of the refund of the cost of transferring from inland compresses [fol. 48] and warehouses.

I have a letter from the Auditor of the Southern Pacific Railroad addressed to me, outlining the practice of the Southern Pacific in applying the local and export rates to cotton. (R. 17). It shows the following practices:

(1) When cotton is covered by a through bill of lading issued to a foreign country and goes to the pier, the export rate is applied.

(2) If shipment is covered by bill of lading calling for export, and consignee demands local delivery on account of cotton being locally consumed or going into storage, the domestic rate is assessed.

(3) If shipment is covered by bill of lading calling for export, and the cotton is set on the pier, the export rate is assessed. (R. 18).

(4) If bill of lading calls for local delivery, and if ordered to Shipside before freight is paid, the cotton will be sent to the pier and the export rate assessed.

(5) If bill of lading calls for local service and the cotton is ordered placed at high density press, the local rate will be applied.

(6) If bill of lading calls for export and the cotton is ordered to high density press, the export rate will be assessed.

(7) If bill of lading calls for export, and it is necessary to hold the cotton in the yard, awaiting orders as to the piers or shipside delivery, the export rate is assessed until disposition has been received, and then the rate would be [fol. 49] corrected to domestic if the cotton was changed from export to domestic.

(8) If the bill of lading calls for service to Houston or Galveston only, and consigned to cotton factors, a local or domestic rate is assessed.

My Exhibit A-1 in a letter from the local Agent of the Houston Belt & Terminal Railway Company at Houston outlining the practice of that Company in assessing rates on cotton in Houston. (R. 19). It follows the same general plan outlined by the Southern Pacific. The statement in the letter refers to all the cotton dealers and warehouses in Houston. The list in paragraph #1 has no bearing on the case. (R. 20).

Less than 4% of the cotton that moved last season from interior ports moved direct to ship and had the export rate applied. The balance, approximately 96%, moved to the compresses in Houston at the domestic rate. The domestic rate is 80¢ from Texas common points, and the export rate, including the wharfage, is 85¢ to Houston. It is 85½¢ at

Galveston. The net export rate to the carrier in both cities is the same, 83½¢. There is a difference in the wharfage charge of 1/2 cent.

I have here a memorandum of 16 consignments of cotton moving from points in Texas to the Houston Compress Company in Houston, on which the local rates were applied and for which space was (R. 21) reserved on board the ship before the shipments left the point of origin. The Houston Compress Company is a Texas Corporation engaged in storing, handling and compressing cotton, and also operating a warehouse, and substantially all of its stock is owned by the firm of Anderson Clayton & Co., but the compress company handles cotton for the public generally. (R. 22). [fol. 50] This memorandum is Exhibit A-2. (R. 23).

Cross-examination:

The shipments in A-2 were received at the compress, not at the wharf, of the Houston Compress Company. None of them were made by Anderson Clayton & Company. (R. 24). I understand that these shipments were all compressed to high density, with the exception of 200 bales from Giddings, Texas, moved in round bales. I ascertained that the domestic rate rather than the export rate was assessed by examining the carriers' record of delivery. It would be expensive to police this traffic and ascertain whether or not it is export or local traffic. (R. 25).

Cotton which comes into the compresses at Houston, consigned to Houston merchants and factors, undergo the merchandising operation rather than a transit operation. The service consists in arranging the cotton into certain grades and putting it in certain stocks from which it is subsequently shipped. (R. 26). These services were not performed on the cotton shown in Exhibit A-2. Nothing was done to that cotton but reduce it to high density and take it right onto the ship. Space had been reserved for it on the ship already; I got that information from the ship agent. (R. 27).

All of the cotton of the Turning Basin Compress is merchandised, which means sorted, graded and prepared for market. The figures of 4% was approximately what moved on through export bills of lading. It does not mean all of

the cotton on which the export rate was applied. A great deal of cotton at both Houston and Galveston comes in on the local rate and is subsequently readjusted to the export rate. Whatever there would be of that kind would have to be deducted from the 96.1% estimate which I made. (R. 29). If the owner of cotton which has moved in on the [fol. 51] local rate declares it for export, the carrier charges the export rate and assumes the cost of transfer from the compress or warehouse to shipside, and it may be switched or drayed to the ship. If the refund which the tariff provides for covering the cost of transfer to the shipside is more than the increase in the rate, the shipper would declare it for export. The tariffs provide for refunds to shippers, or allowance to shippers, for drayage on export cotton, or concentrated cotton, and they have, I believe, a year in which to declare it concentrated. (R. 30). If it cost less to dray it down to the vessel than the allowance provided by the tariff, the shipper would naturally avail himself of the rate and get the allowance. A substantial amount of the cotton is handled that way. If the shipper declares for export and pays the export rate, the railroad company absorbs at Houston 13¢ per bale, and at Galveston 22¢ per bale. That is the cost of moving the cotton from the warehouse to the ship. (R. 33). The carriers make an allowance of 2½¢ per 100 lbs. where the cotton is drayed in Houston. I understand that refund is made regardless of how the cotton is transported to the ship, and regardless of the cost of transporting it. If the cotton is drayed and an 83½¢ rate is paid on it, and an allowance of 2½¢ per 100 lbs. for drayage is made, the net revenue of the carrier is 81¢ per 100. (R. 34). On cotton that is switched from the water front warehouses to shipside, the shipper pays the 83½¢ rate and the carrier absorbs the switching cost whatever it is. (R. 35). The practice is not to collect the switching charges; the railroad just switches it. (R. 36).

On the 16 shipments in Exhibit A-2, the bills were all local bills and not marked for export. My opinion is that there would be no difference between the service on a shipment moving on a local bill of lading and the service on a [fol. 52] shipment traveling on a local bill of lading marked for export, except that the shipment for export would be entitled to a longer period of free time under the demurrage (R. 37) rule.

Counsel Fulbright, for the Houston Cotton Exchange, admitted for purposes of the record that 99% of the stock of the Houston Compress Company was owned by the Anderson Clayton Company (R. 38).

On the shipment shown on Exhibit A-2, from Taylor, Texas, for instance, I did not follow up the shipments to see whether they were ever transferred to an export bill of lading, but they were delivered on the domestic rate adjacent to the shipside within hand-trucking distance of the ship. (R. 39). The carriers have no information available on which they can act in setting up an under charge, and the owner of the cotton will not ask for a readjustment of the export rate unless it is to his interest to do so. (R. 40). The assumption is that these shipments got substantial shipside delivery on the domestic rate. (R. 41). It is my understanding that all this cotton was graded and merchandised up state. If the export rate was finally paid on these shipments, the shippers can show that. These shippers were not delivered at the wharf but at the compress in the warehouse back of the wharf, and if the shipper paid shipside rates, the carrier would have to pay whatever expense there was for transporting from there to the ship's berth. (R. 43). In all cases there is a service of putting the shipments within the reach of the ship's tackle. (R. 44).

The Houston Compress Company follows the same plan that is followed on the piers at Galveston. The Ship's Agent takes delivery within reach of ship's tackle—200 feet. In the case of the Houston Compress Company, the case of the 200 feet would extend over possibly a quarter, or a third of the way across the warehouse of the compress [fol. 53] company. The cotton is stocked in the warehouse within that specified limit, which is marked out for it. Any delivery there is delivery to a ship agent. (R. 45).

Direct examination with respect to Galveston:

The Shipside Density Press Company has six compresses adjacent to the wharf and under certain circumstances, the cotton may be trucked by hand from the press to the ship, namely, when the ship to which it is destined is berthed close to the press or warehouse where the press is located. The ships in Galveston do not as a rule change their berths.

The Cotton Concentration Company do a merchandising business there, and some of their cotton may be trucked by hand under similar circumstances. That company has no compresses of its own; it handled a total of 353,365 bales last season, of which 15,862 were hand-trucked to the shipside. (R. 47). The Cotton Concentration Company usually uses the compress of the Shipside Density Company. There are 15 cotton warehouses in Galveston, from which the cotton is switched or trucked to shipside. The usual practice is to truck it to shipside. That means wagon drayage or automobile trucks. The 15 uptown compresses handled 1,883,821 bales last season. The total number of bales received in Galveston last season, according to the records of the cotton exchange, were 2,402,879 bales. 1,929,111 bales of that were exported; that is approximately 80%; 422,878 bales went in the coastwise movement. 85,954 moved out of Galveston by rail to points North. There is no local consumption of cotton in Galveston.

Exhibit A-3 is a letter from J. Witherow, local Agent of the G. H. & H. Railroad Company, that is, the joint Agent of the I. & G. N. and the M. K. & T., outlining the methods of applying the local and export rates on cotton at Galveston. The letter shows that the methods followed are [fol. 54] substantially the methods of the Agents at Houston. (R. 49).

Exhibit A-4 is a letter to myself from the local agent of G. C. & S. F. Railroad at Galveston, Mr. A. W. Dunham, pertaining to the method of applying the rates on cotton, and is substantially in accord with the other letter.

Some of the cotton which moves into Galveston on domestic bills of lading is ordered direct to shipside upon arrival, and in that event the carrier applies the export rate and assumes the cost of transfer from the warehouse to the ship. (R. 50). This method of handling Cotton is employed to a considerable extent by the cotton factor.

On such cotton, consigned to the Shipside Density Compress Company, and moving at the local rate, consignment is made in care of a Ship Agent, and the space is contracted for sometimes weeks or months before the shipment moves. Usually the bill of lading comes through the bank with definite instructions as to the application of that particular shipment on a certain contract. (R. 51). Very often when

the reservation is made, the shipper does not have in mind any particular shipment. That is also true at Houston.

This statement shows seven shipments picked at random, moving from Texas points, consigned to Galveston on which the intra-state rates were applied, for which vessel space had been reserved before the cotton left the point of origin. For the 40 bales shipped from Mart, Texas on August 29th, 1923, the records of the Steamship Agent show that that space was reserved on August 20th, 1923. The shipment arrived over the I. & G. N. and was delivered to a vessel, destined to Bremen. Sixty-two bales from Clarksville, Texas, billed out on September 27, 1923, for which space was reserved on June 8, 1923, moved via the I. & G. N. and were delivered to the Steamer destined to Liverpool. (R. 52). This particular shipment was applied on the contract made three months before. Ordinarily a letter [fol. 55] accompanies the bill of lading directing the ship agent to apply this shipment on contract of a certain number. The contracts have numbers. (R. 53). These shipments were delivered to the Shipside Density Compress and not direct to the vessel. This information in regard to space reservation was secured from the Steamship Agent. (R. 54).

Cross-examination:

When the reservation is made, the buyer at the port does not know what cotton he will put in that space, but he does know before the shipment leaves the point of origin that that particular cotton is going into that particular space to be applied on that particular contract. (R. 55). The man who reserves the space in the ship might not own the cotton until after delivery at the port. There may have been a bona fide sale. The purpose of this exhibit is to show that it is possible for the shipper up-state, knowing that the space is reserved and intending to apply this cotton to that space, still ships out and pays the 80¢ rate. (R. 56).

All of these shipments pass through the compress and are compressed at high density and the shipper paid the regular price to the compress, which was 72¢, and for that charge the compress delivered it to the ship's tackle. The delivery was made by the compress and not by the railroad.

(R. 59). It is my understanding that the same thing happened at Houston as shown in my Exhibit A-2.

The Shipside Density Press does not maintain facilities for merchants to merchandise their cotton. The Houston Compress maintains a large warehouse which is used by various merchants for a merchandising service. (R. 62). [fol. 56] If the ship could be shifted to the berth opposite the facility where the cotton is, it would obviate the necessity for draying the cotton (R. 63). I understand that at Houston the ship is required to shift her berth. The practice of shifting or not shifting the berth of the ship is simply a custom, liable to change, which is determined largely by competition. (R. 64).

In Houston you cannot dray from the North side to the South side of the channel, because there is no bridge, while at Galveston you can dray from one pier to another. I know that refunds are being made at Galveston for the drayage, and that where this is done, the carriers applied a shipside rate and also apply a penalty of 6½¢ per 100 lbs. for a second concentration where their investigation discloses any cotton has been concentrated a second time. I presume that that is done also at Houston. A large amount of cotton moves from Houston to the port of Galveston by boat. (R. 65). I presume that a large amount of that has to pay the 6½¢ penalty for a second concentration. The warehouse and the cotton concentration companies on the wharves are purely merchandising facilities, and it cost them as much to get to the shipside as it does the interior back from the water front compresses, with the exception of a small quantity which they hand-truck when a vessel is there adjacent to the compress. The uniform drayage rate is 18¢ per bale, which applies between any two points along the water front, and which applies from most of the interior plants to any pier on the water front. I do not think that any of the compresses own any of the dray lines, but some of the cotton men own their own drays which they use occasionally when business is brisk. (R. 66). The actual cost of drayage would vary according to the [fol. 57] haul and according to the volume handled.

I find that the shipside or export rates were very generally applied at both the Houston Compress and the Shipside Density Compress where the shipments were consigned

direct to Shipside. It was done in practically all cases. (R. 67).

Under the orders of the Texas Railway Commission the local rate applies to all points on the rails of the Galveston Wharf Company, under Circular #401. If a cotton merchant should induce the Galveston Wharf Co., to lease to him a facility on the water front, under the Railroad Commission of Texas instructions, a local Galveston rate would have to apply to that point. (R. 68). That is the same rate applicable at Houston. The Shipside Density Company has no merchandising facilities, and does not concentrate cotton, whereas the Cotton Concentration Company has no compresses and renders only merchandising services. There is no relation whatever between the two.

My Exhibit A-4 was intended to show that it is possible for cotton to be exported where it has paid a local rate and no further charges. It is immaterial whether the shipment moved through the Shipside Density Press or through a back from the water front press. They all perform the same service for the same price and they all deliver for that compression charge to shipside. The press back from the water front must perform actual drayage service. (R. 71). The back of the water front compress would pay the same drayage that the Shipside Density Compress would, unless these particular shipments happened to be delivered to a ship where they could be trucked by hand from the Shipside Density Compress. If so, the Shipside Company might [fol. 58] have been able to truck it for 10¢. (R. 72).

In regard to cotton concentrated in the interior, moved to Houston and held over there, and then shipped to Galveston for export, they sometimes have to pay a second concentration charge. They don't intend to do that. Most of their cotton would be exported by the port Houston and they would avoid paying that second concentration.

The particular shipment in Exhibit A-4 did reach Galveston intended for export.

WITNESS J. H. W. STEELE

I am President of the Shipside Density Compress Company. There are six compresses located at piers 10, 29,

32, 36, 39 and 40. These compresses were established in 1920. The initial investment was about $775,000.00. It is now incorporated for $650,000.00. (R. 74). We have no storage facilities and no room for concentrating, weighing or clamping cotton. The actual compressing of cotton is our sole source of revenue.

Practically no cotton is consigned to us. It is consigned to various brokers or shippers doing business through the port. (R. 75).

Up to last year it was our practice to make a charge for compression that did not include the drayage and the shipper would pay the local rate into the port, pay the compression charge, and then look after his own drayage and pay that. But the interior presses at Galveston put out a flat rate including drayage to be delivered anywhere on the (R. 76) Galveston water front and we either had to meet that condition or go completely out of business. At present we have a fixed charge of 72½¢ per bale, covering delivery of the cotton at any point that any other press in Galveston will. On that portion of the cotton that might be [fol. 59] delivered to a Steamer at our pier, our advantage there would be the trucking less the 1¢ that we don't get for unloading, which the interior press does get, which would be a saving of about 6¢ a bale on that part of the cotton. About 25% of our cotton is handled that way. We dray the other 75%. (R. 77). If we have only sufficient business to have one plant running, for instance, at pier 40, and if we were tendered cotton at pier 10, we would have to dray the cotton the full distance of the 30 blocks, and unless we had at least 500 bales for pier 10 we would hardly get up steam for it. The location of our compresses has no bearing on it. We might as well be 10 blocks away if we have to dray the cotton, and most of the cotton coming in is handled by dray. (R. 78). Drays are used to get the cotton quickly to the ship. The ships will not move for it.

We receive our instructions to compress the cotton from the shipper, the ship agent and the freight broker. We sometimes know an hour in advance what ship it is going on. We don't often know the destination of the cotton at all. We don't know whether it is going to Bremen or where it is going.

We don't often hold cotton over night. We want to clean up every day.

The practice whereby the compresses absorb the drayage grew up largely last year. With us it came about last year. We had to meet local conditions in Galveston. It was a matter of meeting competition. Our customers are small interior shippers. We have the only compress business located at a port that is independent, there being no cotton shippers interested in it. (R. 80).

[fol. 60] At our compress there is no absorption of drayage or allowance to our company for drayage by the railroads. If the cotton was shipped in on the 80¢ rate, the shipper has 3½¢ less than the through rate. He benefits to that extent, but most of the cotton that we get that way is handled locally in Galveston. (R. 81.) The only allowance to the shipper for the drayage service which we perform is in the rate, in the local bill of lading. We own no drays; we truck. The rate for trucking is 18¢ a bale. The 72½¢ per bale which we charge for compressing covers all the service to the shipper. (R. 83.)

The greater part of the cotton that comes to us is drayed to our compress from the interior concentrating plant back from the water front. It also is delivered to us by the carriers. In regard to this cotton that comes into our compress on a domestic bill of lading, I do not think that any of it is subsequently changed to an export bill of lading. That applies also to the cotton we receive by dray from the concentrating plant off the water front. (R. 84.)

The average rate for the draying is 18¢ per bale. The variation for different hauls is about 1¢. There is a greater variation from presses that are not on the water front, but I think they are all pretty nearly on the same basis unless you go to the Southern Pacific dock or some of the extreme points. The interior presses get 17½¢ and 5¢ for unloading because he is the shipper of the cotton, so he gets 22½¢ as against our plant. We don't get the benefit of the 5¢, it goes to the shipper. As we are not in the shipping business we lose 5¢ a bale as against a firm like McFaddin.

The railroads assess the shipside rate of 83½¢ on all through bill of lading cotton. (R. 86.) We compress that

cotton to high density, and receive pay for that service from the shipper. The shipper makes the reclaim on the [fol. 61] railroad in that case. We don't function in any of the traffic problems at all. (R. 87.) The through bill of lading cotton is delivered on the dock of the steamship company, we get it there, compress it and return it to the dock. Sometimes we have to truck it as much as 400 or 500 feet (R. 88) and the average would pretty nearly off-set the drayage. If the cotton comes to the same pier and is consigned on a local bill of lading, the only difference would be that we might take it to some pier located away from where the plant was, and in that way we would perform more service. In that case, we are making delivery to the steamship for the shipper. (R. 89.) Compresses and all presses make a standard charge of 72½¢ a bale.

Very little cotton is shipped in with directions to notify us of arrival. Last year, we handled 15,000 bales, out of a total of 475,000 bales, on through bills of lading. (R. 90.) The compresses are numbered according to the piers; the piers are numbered according to the streets. Most of the private plants are equipped with compresses.

When cotton goes to a facility that has no compress, the shipper pays the 80¢ rate, and when the shipper elects to export his cotton and have it high densitied at one of our compresses (R. 91) he drays it to our compress, uses that 18¢, then we compress it for 72½¢ and pay 18¢ out of our earnings to get it back to the place where it is going. If a shipper owns his own plant, he gets the 5¢ unloading charge, and he has that advantage over us. We actually unload the cotton from the cars on the local cotton, but not on the through cotton. (R. 92).

The cotton that is first concentrated up-town and then is drayed to us for high density moves on a local bill. He is saving 3½¢ on the rate, but he pays it out in drayage. We unload the cotton that comes in on local bills of lading to [fol. 62] the ship agent. (R. 93.) The shipper gets the 1¢ for unloading, but we do the unloading. (R. 94.)

Some cotton is consigned under a local bill of lading to the ship agent, but not a great deal. (R. 95.)

Cotton moving under a local bill of lading to the cotton centration company, situated on the water front but off from the piers, would be unloaded by the cotton

concentration company, and stored until ordered out by the shipper. The shipper might order it to the Shipside compress to some inland compress. During the present season our company has received very little cotton from the concentration company. Most of it has gone to the up-town plants. (R. 96.) The concentration company pays the drayage to the uptown compress. When it is drayed back, the up-town compress pays the drayage because they include the drayage in the rate of 72½ for compression. The plant of the cotton concentration company is about 200 or 250 feet from the warehouse at piers 29 and 30. (R. 97.) It is my impression that the cotton concentration company charges the shipper for the drayage from their plant, and that it is included in the storage rate.

The shipper directs the movement of the cotton to our plant, where the cotton moves on local bills of lading. Most of it is consigned to freight brokers who act as agents of the shippers. (R. 98.) Very little cotton moving in on local bills of lading is consigned to a ship agent. Cotton that goes to our compresses from the interior direct under the local bill of lading is delivered to us by the carriers, and if there was a considerable number of bales the car would be switched directly to our compress. If there were only a few bales, the car would go to the mixed platform, and the cotton would be drayed to our compress. It is a matter of [fol. 63] the convenience of the carriers.

Witness Lawrence Westbrook

I live at Waco, and am Manager of the McClenan Farm Association, (R. 100) a co-operative marketing organization of the farmers. My duties are primarily the marketing of cotton, and I have held that position three years. We handle a good deal of cotton for the Hill County Cotton Association. I was in the cotton business prior to assuming this work, and I am familiar with the method of handling and shipping cotton in Texas. (R. 101.) We sell to the highest bidder, assemble and concentrate largely at Waco, also at Hillsboro and McGregor and then ship to our order, notify the parties we have sold to. We attend to the load-

ing and the shipping and ordinarily we ship under the local bill of lading. Sometimes we use the export bill of lading. Usually we do not pay the freight. If we do not pay the freight, of course it is not included in the purchase price that we receive. We pay a domestic rate of 80¢. (R. 102.) I know that there are some compresses at Galveston and Houston located back from the water front, and some on the water front, and I should think that the parties who have their compresses located on the water front, and do not have to pay the 18¢ drayage, would be able to pay more for the cotton than those who had to pay the additional charge of 18¢. There is a very narrow margin in the handling of cotton, and I think that difference would have a very considerable effect. (R. 103.)

The difference of 18¢ that exists as against the back from the water front buyer, will eventually present free and unrestricted competition, I think. It probably has to some extent already, with the margins as narrow as they are. It might mean that some people who are at this time, and [fol. 64] have in the past, purchased cotton from us, would be compelled to go out of business (R. 104). They could not compete with the people who are favored by having a superior preferential location. The people I represent are interested in maintaining free competition, because the more competition we have, the better chance we have to get a higher price.

Cross-examination (R. 105):

Our organization is not connected with the Texas Farm Bureau Ass'n. I think they concentrate cotton at Houston. The cotton we sell is equally divided approximately between Galveston, Houston, Waco and Dallas. (R. 108.) We ship our cotton in accordance with the instructions of the company that is buying it. We could sell to some firm that is concentrating at Houston or Galveston, and using the various water front facilities there. I think some of our cotton moves to the Shipside Density Compress at Galveston. We handled approximately 27,000 bales last season. Most of our cotton is sold f. o. b. the compress. The compresses at Waco and Hillsboro are owned largely by men not in the cotton business. (R. 111.) I am not in a position

to testify about how the cotton is handled after it gets to Houston or Galveston. I am interested simply in maintaining free and unrestricted competition between the buyers.

WITNESS BAYLISS E. HARRISS

I am a cotton merchant in the firm of Harriss, Irby & Vose. The principal office is in New York and our head office for Texas is in Galveston. We have our own warehouse in Galveston—about one mile and one-half from the wharf, on the average. The nearest wharf is about ten blocks. I have been President of the Galveston Cotton Exchange and Board of Trade for nearly two years (R. 113). [fol. 65] I have been in the cotton business in Texas and Oklahoma for eighteen years. I have been in the cotton business 24 years. There is probably about seven and one-half million dollars invested in warehouses back of the water front in Galveston. A rough estimate of the value of the concentration company's warehouse near the wharf is about three-quarters of a million dollars. I am familiar with the method of handling cotton at Galveston. (R. 114.) On cotton purchased by us and consigned to our place of business at Galveston, on a local bill of lading, we pay the local rate of 80¢ per 100 lbs., and then we have to pay 18¢ per bale to have it drayed to the water front if we export it. The drayage company is a corporation and an independent concern. We are not interested in it financially. (R. 115.) As a margin in the cotton business, 18¢ per bale is considered a very vital and important part of the whole profit. 18¢ per bale would represent perhaps one-fifth to one-fourth of what any exporter could reasonably hope to make in the way of net profits on a legitimate basis. It would effect the price which we are able to pay for cotton to the producer. (R. 116.) We built the improvements to our plant back from the water front in 1914, and at that time there were not in Galveston, Houston, or either of them, any water front warehoueses or compresses, other than those operated by the wharf company. We had no reason to believe that such would be erected. At that time, the rate for local and export was the same, which I believe

was an ideal situation. The railroads refunded us the drayage on cotton which had not been concentrated more than once in the interior. At that time it was impossible for us to have foreseen any change in that condition. (R. 117.)

Cross-examination:

Prior to the war period, I think the allowance for dray- [fol. 66] age was approximately the same as the difference between the local and export rates as they exist today. At that time, the only difference between the local and the export rate was represented by the wharfage. I think the difference between the two was established at the time the railroad administration was granting an increase in rates. (R. 118.) I think that the average time that we store cotton is about three weeks the year around. (R. 119.)

At one time we considered purchasing water front property, but decided that in view of the fact that the rates were the same, and in view of the refund allowed by the railroads for drayage, there would be no advantage to us.

I think at the present time that there should be one rate for both the domestic bill and the export bill and that the railroads should refund the actual cost of drayage or else perform the service of switching for their own account. (R. 120.) I feel that at the present time I am being forced to compress cotton for 54½¢ per bale, on account of the 18¢ drayage charge. The compress at the wharf has to pay the same drayage charge from their compress to the vessel here in Galveston—about 18¢ per bale freight rate higher than the water front man at Houston. We are allowed 48 hours demurrage, and I understand that the water front piers, or warehouses, are allowed five days free time. Normally, we do not pay much demurrage, but last year we got congested and paid a good deal. (R. 124.) The water front warehouse has an advantage over us on the small percentage of cotton that they are able to load without paying all of that 18¢ charge, namely, when the ship is placed just right. At the time when the two rates were the same, the railroads only made refund on cotton that had not been concentrated more than once. I believe that the refund should be made on all cotton, whether it has been concentrated once or twice. (R. 125.) We think we should have that privilege

[fol. 67] at Galveston on cotton shipped to us from Houston. We do not adk for one more concentration privilege at Galveston than they have anywhere else in the state, because the cotton at Houston would go to the Shipside (R. 126), (R. 127).

The back from the water front warehouses and compresses at Houston are exactly in the same position as the back from the water front warehouses in Galveston. (R. 128.) The water front compresses at Houston do not have to pay the 18¢ drayage. Our contention is that the discrimination lies between the up-town presses in Galveston and in Houston on the one hand, and the shipside press in Houston on the other. Our firm decided not to locate at the water front in Galveston, because we learned that the railroads made the refund for drayage only when the drayage was actually done. It would have been more expensive to locate at the water front (R. 130). A geographical location would have been of benefit to us, if we could have induced the Steamers to run jitney service to our warehouse. If we had put in a large facility serving other shippers we might have induced the Steamships to come there. (R. 131.) It has always been a well defined principle of the railroad and of the Commission to make a sufficiently low rate for delivery back of the water front to take care of the delivery to the water front. I know that the Houston people have invested a great deal of money in building facilities adjacent to deep water. Also a number of concentrators, exporters, and warehouse men were influenced to invest considerable sums of money in back from the water front warehouses, (R. 132) and I think that they should not now be placed at a disadvantage. I think a lower rate should apply to the facilities back of the water front than that which applies to facilities on the water front. I would say that it costs the water front compresses a reasonable amount for [fol. 68] trucking to get cotton to shipside. That amount would vary according to where the cotton is in the plant and where the ship is berthed. (R. 133.) I do not think that the cotton concentration company at Galveston can get cotton through the water front cheaper than we can. I think that the location of the cotton concentration company is not so very near to a pier which is used for cotton. The nearest pier has been used for unloading sulphus, but it

could be used for loading cotton. (R. 134.) The Shipside Density Compress Company conveys about 25% of its cotton to the ship by truck, and that is a cheaper operation than drayage. That has been going on three or four years, and we have not experienced any great difficulty from that competition. We have a compress, but do not solicite business from the public generally. (R. 135.) If we were soliciting business from the public at large, we would want to put it in the most advantageous geographical location. Until recently the margin of profit in cotton was much greater than it is at the present time. Considering the services my organization performs, if we could not make at least a dollar a bale profit out of cotton, we would get out of the market and quit business. (R. 136.) There are about 20 other compresses and warehouse facilities in Galveston, all of which except the cotton concentration company, are located distinctly back of the water front. I think that the difference of 3½¢ per 100 lbs. is a fair average and ought to be maintained between the local delivery and the shipside delivery. (R. 137.) Warehouses at Houston used by merchants to perform merchandising services should be assessed the same rate to get the cotton into their plants. The difference at Houston, should be the actual cost of bringing the cotton to shipside. I do not think that this situation is analogous to a case where there are two wholesale houses, one with a spur track and one so located that it cannot have a spur track. (R. 140.)
[fol. 69] I do not think it would be fair to take the average cost of the various compresses in getting to the ship tackle and make that the difference in the rate. I think that the railroad should refund to the concentrator only what he has actually paid out for drayage, supported by a bill from his drayman, whether that be 6¢ per bale or 10¢ per bale or 18¢ per bale. (R. 143). I do believe that a maximum should be fixed, that in no case should more than 20¢ a bale be refunded. As long as I have been in the cotton business, it has been the practice of the railroads with the approval of the Interstate Commerce Commission to equalize the concentrators regardless of where they are located. Whether at Dallas or Ft. Worth, or back of the water front at the port. (R. 144). On the basis of that principle, many shippers and concentrators have spent large sums of money

in the interior and back of the water front concentrating warehouses.

We have practically no cotton coming through on export bills of lading. As shippers, our firm puts a considerable amount of cotton through a number of compresses and warehouses at Galveston, besidew the one we own. At times we buy a good deal of cotton at Houston, and have it delivered to us f. o. b. shipside Galveston. (R. 145). We make no direct exportation from Houston to Galveston. There are a number of exporters in Galveston who have facilities which include a compress. There are others who simply have a warehouse and they send their cotton to a compress when they wish to have it compressed to high density.

On cotton originally concentrated at Houston, which we buy and take to our plant at Galveston and compress there, and take it to shipside under our compression charge, we pay 80¢ plus the expense of drayage and wharfage, if we concentrate it again at Galveston. (R. 146). If we had a single rate applying in Galvetson and handled the cotton in the same manner, under the existing tariff, the handling at [fol. 70] Galveston would constitute a second concentration; and a penalty of 6½¢ would be imposed. The shipper would pay that. (R. 147).

WITNESS D. C. REED

My firm is E. H. Perry & Company, Austin, Texas, Cotton Merchants. I have been in the Cotton business in Texas since 1914, and prior to that I was a country merchant handling general merchandise. We concentrate our cotton in Galveston principally, and have facilities there for that purpose, consisting of a block of ground with a warehouse. (R. 148). Our warehouse is back of the wanter front. When we purchase cotton in the interior, we ship to Galveston and concentrate at our warehouse there, paying the rate of 80¢. It costs us 18¢ per bale under a drayage contract, to get our cotton from the warehouse to the shipside and this makes our total cost about 83½¢ per 100 lbs. The drayage is handled by Hanson & Sons, and is a bona fida charge, actually costing us 18¢ per bale.

Our firm is not interested in the drayage charge, and does not participate in them. I understand that the drayage charge in Galveston is uniform. I understand that some of the warehouses and compresses located on the water-front do not have to pay a drayage charge delivered to the ship. I reason that they have an advantage of 3½ points. Under competitive conditions in handling cotton, I consider that difference matterial. (R .150). This places the back from the water front men at a distinct disadvantage.

In unloading our cotton at our warehouse in Galveston, we have to truck it some distance. I would not say that I am perfectly familiar with the trucking service of the Houston Compress Company at Houston, shipside. In answer to the question whether we perform almost as great a service at our warehouse at Galveston when we unload that [fol. 71] cotton out of the cars as the Houston Compress Company does at Houston, I will give you my version of that, and how I arrive at the conclusion that this difference in the freight is really a net difference or a net profit to the warehouse located on the water-front. I understand that some of the more modern warehouses on the water front are only about 200 feet deep back from the waterfront, and allowing for the pier, I should say that more than half of the warehouse would come within 200 feet of the ship's tackle. (R. 151). I think it can be shown that it cost the [fol. 72] average warehouse in Galveston as much money to move the cotton to the run-ways for the drays as they require it to be, as it would cost a warehouse one-half of which is within reach of the ship's tackle to move it up to within reach of the ship tackle. I conclude that the difference in the rate would be a net profit to the water front warehouse. In rare cases we buy cotton which has already been concentrated once in the interior. (R. 152). If we have to assume an additional charge of 18¢ per bale above what the shipside men have to assume on that class of cotton, that would place us at a disadvantage to that extent, and would discourage us from buying that kind of cotton. Naturally we buy where we can eliminate that charge. (R. 153). Since I have been in the cotton business, it has been the custom of the carriers to equalize all the concentrators regardless of where they are located. That is good business to maintain all cotton concentrators on an

equality, and is unquestionably good for cotton farmers and producers to maintain unrestricted competition among the cotton exporters.

Cross-examination:

I have always understood that the difference between the domestic rate and the export rate was intended to equalize the interior concentrator who could ship to the shipside direct on the through bill of lading with the port concentrator back from the water front who has to pay drayage to the shipside. As a result of competition between the compresses, the practice has grown up of making a flat charge of 72¢ for compression, and putting the cotton to shipside for that charge. This practice does not enure to the benefit of the shipper. If a shipper drays his cotton to a compress back of the water front after it was compressed, he would then have to dray it again to the water. There are two drayages involved when you handle it back of the water front compress. It does not amount to any- [fol. 73] thing in the end, for the reason that this back of the water front compress pays one drayage, there are two drayages involved. The result is that the man who handles his cotton that way still has to pay one drayage, and the drayage added on to the domestic rate makes the export rate. (R. 156). It is true that quite a lot of cotton comes down to Galveston which does not go into the warehouse at all, but comes down via rail and upon arrival is ordered to a compress. That cotton is put to the compress at the 80¢ rate, the compress performs the service of compression and then drays it to the shipside. We pay the compress 72½¢ for compression, and he does not refund us our drayage, since in most cases it is necessary for him to dray it again. (R. 157). We are back of the water front in Galveston, and in practically all instances, the cotton which comes down to us is actually taken into our house (R. 158). The compresses have not always absorbed the drayage. (R. 160). That is a recent thing, resulting from competition. When they put these compresses on the water front, the compresses back from the water front had to absorb that charge, or lose all the business.

We have had our warehouse in Galveston leased since 1914. We have only recently acquired it. It covers about

one block. (R. 161). We have two drive ways through the yard, and have to truck the cotton up to where it is accessible to the dray which come right through the warehouses. The maximum distance we would truck it would be about 280 feet, and I should say the average would be about 75 feet, the average trucking. (R. 163). I am not familiar with what it costs us to truck our cotton or with what it costs the Houston Compress Company to truck cotton there. My judgment is that there is not much difference. (R. 163). If it cost the Houston Compress more, their saving would be reduced to just that extent. I am sure that there is a saving to them. I don't pretend to say exactly what it is. My judgment is that it is practically the entire amount of 18¢ per bale. We have had water front compresses at Gal- [fol. 74] veston three or four years, and we have not felt that they had any advantage over us as they are situated at Galveston.

The railroads in Texas charge a penalty of 6½¢ per 100 lbs. for a second concentration. (R. 164). They do not charge for the first concentration. (R. 165). I think it would be fairly reasonable that cotton previously concentrated should go to Galveston, and that we should have an absorption of our drayage to shipside on that cotton. We do not operate a compress at Galveston. The charge of 72½¢ for compressing includes in it 18¢ per bale for drayage. If a compress at Galveston would offer to compress our cotton at 54½¢, provided we pay the drayage, it would be the same thing. (R. 166).

WITNESS K. TIDEMANN

I am a cotton merchant at Galveston. We have no compresses, only a warehouse, concentration yard. It is back of the water front. I have been in the cotton business in Texas twenty years. Our cotton comes into Galveston on domestic bills of lading at the 80¢ rate. (R. 167). It costs us 18¢ per bale drayage to get it to the water front, and that equalizes the export rate of 83½¢ per 100 lbs. I agree with Mr. Reed's testimony that, if the amount of trucking done by the water front people is about the same, as the amount of trucking that we do in concentration yards and

warehouses back of the water front, the advantage to the water front people would amount to 18¢ per bale. If their trucking amounts to somewhat more, the difference will be proportionately less. The difference is a very material part of the net profit. (R. 168). It is a very serious handicap to operators who have back from the water front facilities, both at Galveston and at Houston. Cotton people are operating on a very narrow margin of profit again, just as [fol. 75] they were before the war. Before the war a net profit of 50¢ a bale on the season's turn-over was a very large profit. In my experience in the cotton business, I have always found that the cotton exporters were equalized whether they were located at the port or in the interior. That is decidedly the best policy for the cotton trade as a whole and for the growers and exporters in particular. (R. 169). In regard to cotton which has been previously concentrated in the interior and then shipped to our warehouse, if we could not get our refund of 18¢ per bale, we would certainly make our prices accordingly and would discontinue buying that cotton as much as possible. The man at shipside would have an advantage over us of 18¢ a bale on that class of cotton.

Cross-examination:

The cost of high density compressing, including delivery to shipside at Galveston, is 72½¢ a bale, and the rate on local shipment into Galveston is 80¢ per 100 lbs. (R. 170). The Steamship people make a difference of 15¢ per 100 lbs. between standard compressed cotton and high density compressed cotton, which results in a slight profit to us by having the cotton compressed to high density. But this difference in the steamship rates is an arbitrary difference which may not last. When the steamship people need cotton, they make better rates on standard compressed cotton. (R. 171). I pay 18¢ per bale for draying the cotton from our yard over to the high density compress, and I do not recover that 18¢ from the railroad (R. 172). The cotton is brought in to the Moody Compress on drays for high densitying, and they perform that service for 72½¢ per bale and deliver it to shipside; but if it is brought into them by car, they make a flat rate of so much per bale including one month's storage, weighing, sampling, etc. I

am sure that a Galveston compress would be willing to [fol. 76] compress our cotton for 54½¢ per bale to high density, provided we dray it to shipside, because I know that they are paying 18¢ per bale for drayage. (R. 174). The shipper determines whether or not the cotton is to be compressed to high density. The Steamship people simply make a difference of 15¢ per 100 lbs. (R. 175) between high densitied cotton and standard compressed cotton. I doubt that this differential in the ocean rate will last very long.

WITNESS A. S. L. TOOMBS

I reside at Galveston, Texas. (R. 176). My firm is the Southern Products Company, with the Agency at Galveston, and the head office at Dallas. We compress cotton at Galveston. We charge 53½¢ per bale for compressing, and 19¢ per bale for delivery, making a total of 72½¢. We render our statements and bills according to that decision. We are located back of the water front. When cotton is moved from our plant by drays, we are at some expense in handling it to the drays, in assembling the marks when the cotton is not high densitied and in moving it from the compress to a position where the dray can pick it up when it is high density compressed. In assembling it for the dray if it is not high density compressed, the cost would be considerable. But where it is moved from the high density compress after it is high density compressed, the charges would be nominal—possibly an additional charge of 5¢ per bale. Cotton delivered at our compress from the interior on a local bill of lading, the rate is 80¢ from Texas common points. It costs us 19¢ a bale for drays to get the cotton to shipside. We pay 19¢ whereas our competitors pay only 18¢, because we are a little further removed from the water front. (R. 178). We have a contract with the drayage company at 19¢ per bale, which provides that if in any calendar month we dray as much as 20,000 bales, the rate [fol. 77] slips back to 18¢ per bale. We have two compresses. From the buying end of the business, 18¢ per

bale would be quite an item to have to compete with. If one rate were established on cotton which is concentrated in the interior before shipping to us at Galveston, we would have to be protected by not having a penalty for the second concentration, in order to compete with the shipside plants, Anderson Clayton Company or the Houston Compress Company. (R. 179). Over eight years we have averaged about 140,000 bales a year through our Galveston plant. Possibly 70% of that is bought from interior concentrators and concentrated the first time before we buy it. On that cotton we would be at a disadvantage if we were assessed a penalty in order to deliver it at shipside, so long as our competitor having a shipside location would get it delivered for 18¢ or 19¢ per bale less. The unit of price for cotton is by the pound, (R. 180), and the loss of 18¢ per bale would make a difference of approximately 4/100¢ per pound. That difference is a disadvantage in meeting competition; even as little as 2 points is sometimes a disadvantage. We do not store a great deal of cotton for the public. (R. 181). The outside accounts amount to 15% to 20% of our business per year, and we make them the same charge of 53½¢ for compressing, and 19¢ for delivering to shipside. (R. 182).

Cross-examination:

My concern and the Southern Products Company are identical, and we charge the Southern Products Company 53½¢ for compression, and they pay their own drayage with a separate account. We have been making bills for other people showing separately 53½¢ and 19¢ since the beginning of 1922, 1923 season. (R. 183). That is, since more than a year ago. As a general rule we do not perform general merchandising services for other concerns. [fol. 78] I still feel that the rates should be lower for domestic delivery than for export shipside delivery. (R. 184). The Southern Products Company ship their cotton in to our compress at Galveston at the 80¢ rate. (R. 185). They pay 72½¢ to have it compressed to high density and delivered to the shipside. They receive back from the Steamship Line 75¢, or 15¢ per 100 lbs., for having it compressed to high density. (R. 186).

WITNESS I. M. GRIFFIN

I am Traffic Manager of the Geo. H. McFaddin & Bros. Agency, cotton merchants at Waco, Texas. I have been in the cotton business since August 1st, 1918, and prior to that I was Freight Traffic Mgr. of the Texas & Pacific Railroad and engaged in traffic with the railroads from 1893 to 1918. (R. 189).

We concentrate most of our cotton at Houston, and Galveston, Texas; some cotton is concentrated at interior compress points. At Houston we have a compress and warehouse with a capacity of about 17,000 bales, located back from the water front near the I. & G. N. Passenger Station. At Galveston we have a large warehouse with two complete compress plants, which have a capacity of about 20,000 bales, located back from the water front some little distance. (R. 190). The cotton we buy at interior points moves to Galveston or Houston on local bills of lading at the rate of 80¢ from Texas Common points. We have compresses at both places equipped for both high density and standard compression. Cotton that is received at our plant in Houston on the 80¢ rate, must be loaded into box cars, and switched down to the docks. (R. 191). It costs [fol. 79] 8¢ to get the cotton from our compress at Houston to shipside. We would get a through bill of lading and by concentration refund, we would get a refund of that 8¢ down to the 83½¢ export rate plus wharfage charge. It would thus cost us 83½¢ per 100 lbs. plus wharfage to get the cotton to shipside. If we do not ask for a through bill of lading, we employ a local switching rate, which varies in accordance with the destination of the shipments; if a one line switch, it would be $8.10 per car; if a two line switch, it would be double that. We would pay the cost of unloading. (R. 192).

At Galveston our cotton is usually drayed from our plant to the piers on the water front. The cost of draying averages 17½¢ per bale. That cost would be in addition to the 80¢ rate. Cotton moves to the Houston Compress Company on the 80¢ rate, to be shipped out from there, and if it costs us more to move our cotton to shipside than it does the Houston Compress Company, we would be at a disadvantage to that extent. (R. 193). The advantage would be the difference in the rate of 83½¢ which we would have

to pay to get our cotton to shipside and the 80¢ rate paid by the Houston Compress Company. There is an intercity switching rate which I am not certain about, but it would be in my opinion in excess of the cost of delivery of cotton by the Houston Compress to shipside. I think that rate is $8.10 for one line, and $16.20 for two lines. It would not apply on export cotton. (R. 194). I refer to that plant of the Houston Compress Company, located on the water front, and not the one back from the waterfront.

The cotton market has returned to a normal condition, and small items of cost are very important. A difference of 1/32, or 1/16, or 1/8 is a very determining factor with respect to the purchase of cotton. I am familiar with the trucking of cotton to delivery to the drays at Galveston. [fol. 80] Such trucking involves an expense which varies according to the distance we have to truck the cotton.

The theory of concentration is the protection of a through rate. It follows that the same rate would be protected to all industries in each locality to the same destination and from the same points of origin. (R. 196). The policies which the railroads have adopted of delivering cotton to shipside at the same cost to all concentrators, regardless of where they may be located, whether at the port or at the interior point, is a good practice. It is essential for the cotton trade as a whole and the cotton producer in particular. If cotton is previously concentrated before it arrives at Houston or Galveston there is a charge at the present time of $0.06½ for the privilege of a second concentration. (R. 197). If the same rates were established for export and local shipments it would be necessary to employ the concentration privilege to move the cotton from the industries back of the water front at Houston to shipside, and if you add to that a rate of 6½¢, and if the industry at the water front does not have to employ that second concentration, he would have an advantage of 6½¢ per 100 lbs., which is a very considerable difference. My firm does not purchase much of this cotton in the interior which has already been concentrated. We would avoid buying any cotton that had been penalized in that manner. That would restrict the number of purchasers for that kind of cotton. (R. 198). I think it would be fair to establish a rate to the

industries back of the water front the same as the rate to the industries on the water front, and that that rate from common points should be 83½¢, which would mean that there would be no reduction in the revenues of the carriers and no penalty to the men handling the cotton back of the [fol. 81] water front. The carriers should move all of the cotton from the plants back of the water front to shipside without further cost to the man who has paid 83½¢. That should be done regardless of whether or not that cotton has been previously concentrated. That would put everybody on the same basis. The interior man who ships from the interior should not be overlooked. It is not economical to force any (R. 199) business into restricted channels. It is not fair to the interior man and to the industry to force him to come down and put his concentration plant at the port. It is not fair for anyone to force him into a certain area, and as you restrict that area, you penalize the majority of those engaged in that industry, and you are placing a premium, as I see it, upon location. You make those locations prohibitive and it takes a considerable cost to put in a plant. I think a man is entitled to the advantages to be derived from a modern plant to the extent of saving in labor costs and in actual handling, but I don't think that there should be any adjustment or application of rates that would give one industry in the same town a lower rate than applies to other industries. As long as all concentrators and exporters could come down to shipside at the same cost, there could be no cause for complaint. (R. 200).

Cross-examination:

Our complaint exists at the present time. If a rate of 80¢ applies on cotton to a plant on shipside, and if that total cost to reach shipside is less than the cost that we pay, we are at a disadvantage. We have been aware of this disadvantage for several months, since the present cotton season began. (R. 202). I do not know about compresses [fol. 82] on the water front at Galveston; we have never employed any of them.

We filed an appearance in Docket 13,991, the Weatherford Crump case. At that time they stated that the movement of cotton back of the water front was not involved, and our statement was in that case that to the extent that

the movement to the compresses and warehouses back of the water front were involved, we would be at a disadvantage. I affirm my testimony in that case.

Our firm does a very extensive business. (R. 203). It has been in Galveston for a number of years. We have had a warehouse and concentrating plant at Houston for three years. Until the present year, we had only a warehouse at Houston which was leased from a railroad. We placed a compress in that warehouse this year. (R. 204). We have both a standard and high density compress. At the time we installed our plant at Houston, we knew that there were compresses on the water front or near the water front. The correction of this disadvantage had been discussed prior to the time that we installed this compress. We felt confidently that this disadvantage (R. 205) would be removed. We could not see how it could continue, and we were willing to take our chances and engage in this business because we did not feel that plants located back of the water front should be at a disadvantage.

We have had a plant at Galveston for many years, and there we pay the 80¢ rate. We merchandise the cotton in that plant, re-handle, grade it, assemble it in lots, and ship it out either by rail or water. (R. 206). When we get ready to move it out of the plant at Galveston, we dray it to the water front and pay the drays for taking it to the water front. We can also have it switched and pay the [fol. 83] switching rate. We could also do that at Houston, by paying 8¢ per 100 lbs. and securing a refund. At Galveston the drayage equalizes the difference between the local rate and the export rate, less the wharfage, and it would be troublesome to pay that drayage and call on the railroads for a refund. (R. 207). We can use the switch line, but I don't understand that that can be done at Houston. At Houston the cost of drayage would be considerably more on account of the long haul. (R. 208). I don't understand that you can employ the local switching rate at Houston without a charge for shipside delivery. I do not think that you can do it at Galveston either; we have never employed it for the simple reason that we can do it by using drays. (R. 209). I do not think that we have exported any cotton at Houston, but we have engagements made and foreign contracts at Houston, and we antici-

pate doing it (R. 209 B). I am not familiar with the switching or draying costs. I am not familiar with the conditions at Houston, but I do not think that the same switching and draying privileges would be available there at the same cost. I think the cost would be prohibitive there on account of the long distance. (R. 210). My opinion would be that the cost of delivering to shipside would be 3½¢ per 100 lbs. over the 80¢ rate. At Galveston the ships are allocated at various berths over a front extending over a distance of some two miles or more, whereas at Houston the vessel either completes its cargo at one pier or shifts from one location to the other. At Galveston the cargo goes to the boat instead of the boat going to the cargo. (R. 211 A). I don't think that we have shipped through Texas City for several years. We have a concentration plant at Texas City and moved it to Galveston. We employ a concentration privilege at Texas City and pay the same rate we would pay from point of origin to Texas City. (R. 211 B). Cotton concentrated at Texas [fol. 84] City and moved to Galveston for export would be high density compressed at Galveston. Such cotton would go to our warehouses in Galveston. We have storage space in a plant in Texas City somewhat removed from shipside, and we used that when we became congested at Galveston. We have been congested at Galveston at various times when the movement was heavy. (R. 212). We do not ship out from Texas City, because usually we do not have the steamship service at Texas City.

I do not think that consideration should be given to the advantage that a cotton firm may have in the location of its plant for concentration. A man is entitled to his faith and his energy and the results to be obtained from it in arranging his plant so that he can operate more economically than some other man, but I do not think that the location of the plant should govern the through rate or the total rate applied. (R. 213). Whether or not the location should govern the rate into a plant, depends upon the extent to which you could police the cotton movement. There has never been a clear cut decision as to what is the line where local delivery ends and shipside delivery begins. Our proposition involves making the rate 83½¢ inbound to everybody. (R. 214). If the cotton was shipped out

by rail, you could get the protection of your through rate, whatever it might be. We are not interested, except perhaps as a stockholder, in the compress at Waco. We have nothing to do with the operation of it.

Before we installed the compress machinery at Houston, we already had the warehouse plant. It is easily reached and has quick switching facilities, and time is an essential factor in the handling of cotton. (R. 215). The plant was leased from the I. & G. N. I do not know that we [fol. 85] could have established a plant at the water front. Such property is expensive. A man does not feel that he should be forced to any portion of the city to do business. It is more expensive to get a water front location. I don't think a man has or should enjoy advantage of a location where he has paid a premium to get at a point where he could deliver his cotton direct to a ship as contrasted with my plant where I can get quick switching service. (R. 216). I do not think that the rates should give the water front owner an advantage. (R. 216). My proposition of an 83½¢ rate back from the water front the same as to the water front, regardless of whether the cotton had been previously concentrated or not, would involve a second concentration in some cases. That should be without charge. I do not think that the concentrator at Dallas would complain about that. (R. 217). I cannot conceive of an instance in which the ordinary plant or ordinary cotton man would want cotton concentrated at one point in the interior for the purpose of merchandising and again concentrated at a second point in the interior, because if he had the second point in the interior he could ship from that second point direct to foreign destination. I do not know whether or not there is considerable second concentration at Dallas. (R. 218). I think the interior men would say that the advantages of getting everybody on the same basis would outweigh any disadvantage that he might have as to that little portion of his movement that he would want second concentration on in the interior.

If it is necessary to make an adjustment or exception on the so-called second concentration privilege at Houston or Galveston, I think it should be done without cost. (R. 220). I see no reason why you should not grant Houston second concentration. (R. 221). The cotton that goes from our

[fol. 86] plant at Houston to Galveston has not been concentrated. (R. 222). I cannot conceive of a man concentrating cotton in the interior and then concentrating it at Houston again, and then sending it to Galveston. (R. 223). [fol. 87] Up to the present time when we have brought cotton into Houston it has been previously concentrated, concentrating it again and possibly compressing it at Houston, and then shipping it to our warehouse at Galveston, we have paid 6½¢ for the concentration here in Houston. My proposal is not to make that second concentration free. My plan has reference to a certain amount of cotton that has been previously concentrated in the interior unknown to the purchaser. Under this arrangement to bring about an adjustment that will be fair to all in my opinion, the man that is back of the water front should have some protection on that small percentage of cotton to enable him to get it to the water front without incurring the 6½¢ penalty. (R. 224). If the business is handled in the way that we handled it today, that second concentration at Galveston or at Houston, would be without charge in my plan. The trouble was formerly that we had no compress at Houston and had to send the cotton to Galveston to be compressed. (R. 227). The great majority of cotton that we bring into Houston will be exported through the port of Houston, and not through the port of Galveston. The charge the compress might make for compression has nothing to do with the rate adjustment. (R. 230). In buying cotton, we consider whether or not it has already received one concentration. We ship all of our cotton from actual points of origin to Houston and Galveston, and it is part of my duty to get the concentration put where it belongs and not against our shipments. (R. 234).

WITNESS I. H. KEMPNER

I am a Cotton Exporter and Banker at Galveston. (R. 235). I have been in the cotton business since 1894. I have been a director in the Galveston Cotton Exchange [fol. 88] since 1895 and was President of it for about 10 years. My warehouse and concentrating sheds and com-

press at Galveston, are known as the Merchants and Planters Compress and Warehouse Company. They are located back of the water front some distance. Our average haul is about one mile and one-quarter. (R. 236.) Our cotton comes in on the 80¢ rate, and we concentrate it at Galveston. It is drayed from there to shipside, and that costs from 18 to 20¢ per bale from our plant. An advantage enjoyed by a competitor of 18¢ per bale would be a serious disadvantage to us and to any other competitor. (R. 237.) Eighteen cents per bale is a material factor in the net profit on cotton. A number of firms located at Dallas, Waco and other points use our facilities and our compress. Their cotton is shipped in on local bills of lading, sampled by us, classed, high densitied and then delivered to shipside (R. 238). We charge 75¢ per bale for compressing and delivering to shipside. We do our own draying and it ranges from 18¢ to 20¢ per bale. It has been the custom for a good many years, to equalize all concentrators and exporters regardless of where they are located. Relying on that custom, we constructed an expensive facility back of the water front at Galveston. We considered a water front location, and were told that the rates were equalized and that we could not get the ships to moved up from their designated berths in Galveston to take on cargo. (R. 239.) Greater competition is to the interest of the farmer with cotton to sell. We do not handle much cotton that has already been concentrated in the interior. If there should be an added penalty on that cotton, we avoid as much as possible buying that kind of cotton. (R. 240.)

[fol. 89] Cross-examination:

We solicit the business of a few large firms rather than numberous small ones. We render a merchandising service, and make a charge for that. When we considered locating at the water front in 1912, we thought of leasing undeveloped wharf property, where the wharf facilities already existed. The Galveston Wharf Company and the Southern Pacific Railroad control the existing wharf facilities. The City of Galveston owns 62,000 shares in the Galveston Wharf company, out of a total capitalization of several million dollars subject to all the bonded issues. The cotton concentration company is located on the premises of

the Galveston Wharf Company near the water front, but it has no compress and does not offer complete facilities in my opinion. (R. 243.) They render concentration services and make a charge for it. During the war the charge for putting cotton to high density was very liberal, due to the high ocean rates. As the ocean rates decreased, the compress companies had to reduce their rate, as the shipper will not have his cotton high densitied unless he saves money on the ocean rate thereby. Finally the cost of compressing was reduced to 72½¢ including drayage to shipside. That leaves about 55¢ for compression charge. The shipper gets an ocean rate which is 15¢ per 100 less by having the cotton high densitied, and that difference runs a little bit in excess of the cost of compression and drayage. (R. 246.) Therefore, the interior concentrator gets his cotton placed at shipside for a little less than 80¢ per 100 lbs., in addition to what he has paid in additional insurance and loss of interest and other expenses. (R. 247.) The carriers' rate which is now 15¢ per 100 lbs. lower on high density compressed cotton, may be changed at any time. (R. 248.) It is a uniform practice for the steamship lines [fol. 90] operating out of Galveston and Houston, to make a uniform difference in their rates between standard compress and high density compressed cotton at the present time, with the exception of the coastwise line, the Morgan and Mallory Lines, carrying cotton to the New England States, which do not make any difference. The differential between the two classes of cotton has been in effect about two years. Prior to that the differential was larger by reason of the fact that the ocean rates were so much higher. (R. 249.) It is probable that there will be uniform action as between the Steamship Lines, but the amount of the difference between the two rates may change at any time. There has been a difference for many years, and that difference has usually been as great as the charge made for the compression to high density. (R. 250.) Our charge for compression includes also delivery to the shipside and it might include patching, and other incidental services which could be performed without extra cost, but as a general thing it includes nothing besides compression and drayage to the ship. (R. 251.) I know of no reason why the steamship lines could not make a higher ocean

charge from Houston to foreign ports than from Galveston. (R. 252.) I do not think there is any relation between a rail rate fixed by a governmental body like the Interstate Commerce Commission, and a Steamship rate that is fixed by the whim of the Steamship operator. I do think that if a shipper is getting to shipside at Houston cheaper than he can at Galveston or at Galveston cheaper than he can at Houston, it creates a monoply for the benefit of one man, or for the benefit of a favored few, and that the Interstate Commerce Commission should act in such a case. (R. 254.) I think the Commission should act irrespective of how that difference in cost may arise. You might say it arises by these people's foresight, I might say that back of [fol. 91] that foresight, there may be railroad favoritism. The object of the Interstate Commerce Commission and the Texas Commission is to prevent monopolies and favors to a few shippers, whether it is through rebate, whether it is through location, or whether it is through other matters by having an advantage and a strangle hold on the commerce and trade of the country. I think that condition ought to be equalized for the benefit of the trade, just as we today equalize railroad rates so that the railroads may obtain a satisfactory freight rate for the stockholders who put their money into it. (R. 255.)

The export rate was fixed 3½¢ higher than the local rate, for the purpose of equalizing the interior concentrator with the port concentrator. (R. 257.) Then this question of high density became injected into it and competition forced this condition that now exists and I agree with you that I rather think that it has tended to offset the actual equalization that it was originally intended to cover. (R. 258.) I think that the practice of compresses in compressing the cotton to high density, and putting it aboard the ship for 72¢ has tended to up-set the equalization that was established by affixing the two rates. It is possible to deliver cotton at our place at shipside in Galveston at the 80¢ rate because we are forced to shrink our revenues from compressing in order to equalize the rates. The compressing charge should be fixed at the port as it is in the interior. It costs Anderson Clayton as much to compress cotton as it does us, and it costs Anderson Clayton nothing to get it to shipside, whereas it costs us 19¢ per bale. We are

shrinking our revenue, and we cannot afford to do it. We have got to get released. (R. 259.) The interior shipper can ship his cotton to our facility on the domestic rate of [fol. 92] 80¢ and have it delivered to the shipside after compression at that rate. He can also have it delivered to the shipside plant of Anderson Clayton at 80¢. The complaint we have to make is that Anderson Clayton is being paid a compression charge of 3½¢ for a service they do not perform. We are complaining of a competitor who has an ad- [fol. 93] vantage that we think is wrong and should be removed, and a discrimination that exists that he can utilize any time he gets ready to the exclusion of the shipper. (R. 262.) If the up-state compress, high densitying cotton charged no more than the net returns of the port compress, after shrinking its revenue to take care of the drayage, there would be an exact equalization between the two classes of compress.

Witness Emil Eggers

I am Secrtary and Treasurer of the Wylie Nicholls Company, Transfer and Storage. (R. 263.) I have been in the drayage business at Galveston over 25 years. There is an 18¢ flat rate charge for draying cotton at Galveston from various compresses to shipside. All of our customers pay the same rate. We haul for the Shipside Density Compress Company, and the flat rate is 18¢, no matter what the distance. We haul for the Santa Fe and Southern Pacific on the same basis. The rate of 18¢ has been in effect since September 1st of this year. Last season the rate was 17¢. (R. 264.) The 17¢ rate was in effect one season, 1922. Before that the rate was 20¢ on account of labor conditions. We do not haul for the Southern Products Company, for Moody, or for Kempner. McFaddin is one of our largest customers. Bush & Witherspoon, Tiedemann, Southern Pacific, Santa Fe, Tarver Steele, The Shipside Density Company; (R. 265) on account of their greater distances, we would have to charge more for the Merchants and Planters Compress, for the Moody Compress, for the Southern Products Compress. We could not haul for them

for the same price. I should consider a charge of 19¢ per bale from the Southern Products and the Cosho Presses as reasonable; 20¢ per bale for Moody & Company presses would be reasonable. (R. 266.)

[fol. 94] Cross-examination:

The draymen have been making flat rates to all the compresses, except the few I mentioned, for three or four years. Before that there were various rates. The actual cost of delivery to the different piers vary, and we base the flat rate on the average. (R. 267.) In 1919 there was a variation of 2½¢. In 1920 there was a variation from 22¢ to 25¢. We made a flat rate of 20¢ and then 17¢ and now 18¢. These changes were due to labor conditions. (R. 268.) We dray from the mixed platforms of the Southern Pacific and the Santa Fe and the G. H. & S. A. The platforms are away from the water front. The shipside company is the only one on the water front. (R. 269.)

WITNESS H. K. KNOWLES

I represent Crispie & Compnay, offices in Waco, with a concentration warehouse at Galveston. I have been with that company since April 1923. Prior to that time, I was with McFaddin in the cotton business for 14 years. At the present time, I am in charge of the buying and merchandising end of the business of Christie & Company. Our warehouse in Galveston is back of the water front. (R. 271.) We do not have a compress. On cotton shipped from Texas common points to us at Galveston, consigned to our warehouse at Galveston, we pay the 80¢ rate, and it cost 18¢ per bale in addition to deliver that cotton to shipside. That makes 83½¢ total. If a warehouse located at shipside Port Houston, Texas, is able to obtain delivery of cotton at shipside at the rate of 80¢ per 100 lbs., which is 18¢ per bale less than it costs our firm, that would place our firm at a disadvantage. (R. 272.) I concur in the testimony of Mr. Dave Reed.

[fol. 95] Cross-examination:

I do not know that we are at a disadvantage because we do not have a compress. If I had a compress in my warehouse, I could get my cotton into high density, and then get it to the ship at a rate lower by the profit made in compression. I do not know that I am at a disadvantage. I do not know whether they make any money out of the compress or not. I suppose they do. That would depend upon the investment in the compress, the expense of operation, and the volume of business, and the management of it. (R. 273.)

WITNESS T. M. NOWLIN

I am in the compressing business at Shiner, Texas. I have been in that business since 1914, except two years. I am familiar with that business. I have been thrown in contact with the buyers and sellers of cotton in my vicinity. (R. 274.) We are nearer Houston than the limit of the 80¢ rate, and the Houston Cotton Merchant can buy in our territory and ship to Houston for 35¢ per bale cheaper than to Galveston. The rate to Galveston on compressed cotton is the same as the rate on flat cotton. To Houston there is a difference. From our point it is 74¢ on compressed cotton and 67½¢ (R. 275) on flat cotton. The rate started in the tariff as 54¢ but the railroads absorbed the compression, and charged that to the shipper. The Galveston merchants, therefore, have been eliminated from our territory. This year, the Southern Products Company of Galveston bought 100 bales of cotton from our territory by accident, that being the only 100 bales concentrated in Galveston. (R. 276.) The Galveston firms do not even put men there. Galveston [fol. 96] is absolutely eliminated as far as competition is concerned in that territory. The tariff states that the rate on uncompressed cotton is 68¢, but the rate on both compressed and uncompressed to Galveston is 74½¢. The Galveston merchants seldom ever put out a limit in our territory, and do not put their men there. I believe that any [fol. 97] substantial amount that any one cotton merchant might have over the other would tend to eliminate him from that territory. (R. 277.) I favor free and unrestricted

competition among cotton buyers and exporters, regardless of what port or town they might be in. The more the buyer or exporter gets for the cotton, the more he can pay the producer. (R. 278.) I agree with the testimony of Mr. Reed, that the difference between the domestic and export rates will react against the interior market. (R. 279.) The man with the 18¢ per bale advantage over the other man will in the majority of cases buy the cotton, and it will only be a matter of time until they will eliminate the other people.

Cross-examination:

I am in the compress business and provide compress facilities for interior merchants to do their merchandising business and concentrating and also compress for the railroads. I charge 25¢ per bale including all the services we perform and 30 days storage; no charge for shipping flat if it goes to an interior mill; if it goes to the port where there are larger compresses, we make a charge of 50¢ per bale. We never have occasion to ship cotton flat to the ports. The fact that we get the compression on the cotton enables us to render the concentration service cheaper to the merchant. (R. 281.) We make no profit from the concentration charge. Some compresses charge more than 25¢ per bale for concentration. The interior merchant who concentrates at our plant can ship out on a through bill of lading (R. 282). The interior compresses should be protected in the freight rate and in any other rate that might be discriminatory against him because it is of vital importance to the exporter who wants to ship his cotton direct from the interior, and save time and expense. We ship quite a good deal that way. We have one English firm that [fol. 98] buys direct from the interior and ships on through bills of lading, everything from our compress direct to England. I consider the service we perform a valuable service to the trade.

We are within the 210 mile limit, and are therefore on a mileage scale to Houston and Galveston. I have talked with various firms in Austin and Waco, and they told me very frankly that it was not worth while to send representatives to our territory because the cotton was practically all bought by Houston firms, in that territory. (R. 284.) I believe they can ship out to coastwise points, New England

Mills, as cheaply through Galveston as they can through Houston. We are so close to Houston that the Houston firms buy principally through the Houston merchants. We have two f. o. b. men who stay there, and they sell principally to Houston people. We have one man there who is doing export business himself, and is not selling to Houston firms. (R. 285.) One merchant in my town told me that he made 35¢ per bale by shipping to Houston flat, and that he did not give the Houston merchants the benefit of the difference in that rate. I know that a man with 35¢ or 18¢, or even 10¢ is in a position to bid just a couple of points more (R. 286) and two and two and one-half points will buy from 9/10 of the cotton merchants. The average interior merchant will sell to anyone for even one point and a point and one-half more than anyone else. A point is 1¢ per 100 lbs.—5¢ per bale. (R. 287.)

WITNESS HORACE BOOTH

I have been Traffic Manager for the International & Great Northern Railway since 1914. It has been necessary for me to deal, to a considerable extent, in freight rates, tariffs and their application. I have with me Fonda's I. C. C. #135, which states on the title page that the rates [fol. 99] therein will apply on intra-state traffic between points in Texas. (R. 288.) It contains the 80¢ rate. It applies also on inter-state Traffic beween Texas points and from Texas points, Galveston, Houston and Texas City for Coastwise movement; also to Brownsville, Eagle Pass, El Paso and Laredo for export as shown in items nos. 200 to 399, inclusive; also from points in Arkansas. Items 40 to 70 deal with concentration, as applied on intra-state local traffic. These are the rules with regard to concentration established by the railroad commission of Texas. (R. 289.) Item 200 reads as follows: "The intra-state rates shown in items #400, 405, 415, 441 to 400, inclusive, and 481 to 648, inclusive, see exception, will also apply on inter-state traffic as follows; Between points in Texas on cotton and cotton linters in bales and cotton pickings in sacks, actual weight, any quantity, shipped for concentration, storage, classification, inspection, market privileges, remarking, weighing,

compression and re-shipment to points outside the state of Texas under concentration rules and through rates from points of origin to destination or to gulf port, Rio Grande crossing or Pacific Coast ports, or beyond, legally published and filed with the Interstate Commerce Commission." (R. 290.) Item 200 means that a shipment of cotton from Dallas moving to one of the Texas Ports would carry the rate named in the item referred to where the shipment of cotton was for concentration or re-shipment to an inter-state or foreign destination. "Legally published and filed with the I. C. C." means the concentration rules and through rates. Items 400 and 405 carry the 80¢ rate and these items provide in effect that that rate is applicable between points in Texas in common point territory and that the 80¢ rate includes all switching and unloading such as is necessary to effect delivery at points in Texas and to points on the Galveston Wharf Company's tracks, or other tracks, at [fol. 100] destination. It does not include any other terminal expense. (R. 291.) It means delivery on the wharf company's track, but not including wharfage charge. It does not mean to shipside. I make a distinction to delivery to the wharf and delivery to shipside. There is a track on the Galveston wharf, and under this tariff I think our line would be compelled to make delivery on this track. The tariff would not apply if the bill of lading carried a notation for export, and it would not apply if the cotton moved (R. 292) direct to vessel. We have another tariff which specifically applies to cotton for export. Item 120 reads that "All shipments of cotton etc., originating in Texas, are covered by bills of lading which indicate that such shipments are destined to other points in Texas, are subject to this tariff, and all rules and regulations embraced in it, regardless of any notation inserted in the bills of lading, for the purpose of declaring the intention of shippers or consignees as to the future disposition of such shipments." (R. 293.) The export rate applies in spite of this because it is export traffic and so declared. The heading at the top of the page reads "Rules and Regulations Applicable only on Intra-state Local Texas Traffic." The rest of the heading is: "Realroad Commission of Texas Commodity Tariff 1-G." If it were export traffic this rule would not apply.

I have with me the export tariff, Leland's I. C. C. 1597. (R. 294.)

The Texas state rates dealing with concentration on traffic moving to Texas points, was filed with the Interstate Commerce Commission in Item 200, as a result of the ruling of [fol. 101] the Interstate Commerce Commission that the rate into the concentration points must be on file with it, because the rates in this tariff are used into the concentration point in connection with shipments moving on Interstate or foreign commerce. (R. 296.) Prior to the promulgation of that rule, it was the practice of the carriers to permit concentration at Texas points and re-shipment to inter-state points, using Texas rates into the concentration points and protecting on reshipment the through interstate rate from the original point of origin to destination. At the head of page 20, we find: "Inter-state Rates on Cotton and Cotton Linters in bales and Cotton Pickings in Sacks, Rates on Shipment for Concentration." Therefore, item 200, intra-state rate, only applies in connection with the rates into the concentration point on inter-state movement. (R. 297.) It is generally understood by shippers in Texas that the rate named in this tariff will not apply on cotton for export, either on through bills of lading or on local bills of lading to the port. I do not think it would be difficult for the average shipper to understand this tariff. I think the caption to the item clearly indicates its purpose. (R. 298.)

Item #410 on page 29 of the Tariff, having to do with terminal charges, is cancelled by Item 410-A, appearing in supplement 5.

Railroad Commission of Texas circular #401 provides that the rates fixed by the Railroad Commission of Texas applicable to Galveston shall also be applied to all points on the Galveston Wharf Company tracks. (R. 299). If the Galveston Wharf Company should accept for local delivery traffic consigned to Galveston out on these wharf tracks, the railroad would have to comply with that and participate in the movement and apply the Galveston rate. It is only because the Galveston Wharf Company leases [fol. 102] its facilities on the Wharf front to the Steamship Agent that the application of different rates on export traffic and on local traffic to Galveston is permitted.

If the carriers make delivery to a connecting steamship line, that is construed as export or inter-state traffic. If the traffic comes into Galveston with the bill of lading marked "for export," in order to obtain more free time, that is inter-state or export traffic. If traffic comes into Galveston for a local Galveston consignee, the local demurrage regulations are applied and the intra-state rates of the Texas Commission are applied. (R. 300) Item #410, supplement #5, Texas Lines Tariff 17-D, Fonda's I. C. C. 135 is cancelled by item 410-A.

Cross-examination:

Item 200 of A. C. Fonda's I. C. C. 135 would permit the storage of cotton at pier 35 and pier 39 at Galveston under the 80¢ rate. I do not know how the railroads could police that shipment and see whether or not the shipper ultimately took out an export bill of lading. (R. 301). There has been no substantial change in conditions since the hearing in Docket 13,991, and the same difference between the services and the privileges on export shipments and on local shipments still exists, and the conditions at Houston are not substantially different from Galveston. I am familiar with the switching charges at Houston. If a consignment of cotton coming from a Texas common point, consigned to order, notify one of the compresses back of the water front, comes over the Southern Pacific, it would have to be switched over our line, and the Southern Pacific would have to pay us the switching charge. (R. 303). That charge is a mileage scale with a maximum of $3.15. If the shipment was consigned order, notify Houston Compress Co., Shipside, we would switch it and the charge would be $8.10—a difference of practically $5.00. That difference [fol. 103] would come out of the earnings of the Southern Pacific Railway Company on the 80¢ rate. All of the Railroads in Houston, have to pay out of their earnings, a switching charge of $8.10 to reach the Houston Compress Company's shipside, or any other industry located in the same channel territory. (R. 304). The difference results from their location at a greater distance. (R. 305).

Under the domestic bill of lading, or local bill of lading, the free time for demurrage is 48 hours, and under the ex-

port bill of lading the free time is five days. There is a difference in the switching charge at Galveston. There is no difference in the switching charge at Houston, but there is a difference in the service. (R. 306). Cotton for export requires more switching service than cotton for local delivery at Houston. If both were going through Anderson Clayton's plant, one for export and one for local delivery, the cotton for export is delivered on the wharf front, and has to be accumulated and held for arrival of the vessel. There are four delivery points on that one track. The cotton has to be classified and placed in berth order and switched to the wharf tracks, which requires a good deal more switching service than is involved on the local delivery cotton. We do not have to classify the cotton to be unloaded at Anderson, Clayton's plant. There are only two delivery points. (R. 307). We have a good deal that moves on a local bill of lading where the vessel is designated, and that cotton requires expedited service. We do not guarantee a certain sailing, but we are frequently called upon to perform expedited service in order to reach a certain vessel. If it were proven that at Galveston the average detention of export cotton is two days, 48 hours, then in actual practice, there would still be a difference. (R. 308). The I. & G. N. handles connecting lines cotton at Houston to the port facilities on the south side of the ship channel at Houston. That connecting line cotton is switched for $8.10 [fol. 104] per car. The I. & G. N. also handles connecting line cotton moving via the I. & G. N. to Galveston, and we get a division of the rates, which is very largely in excess of the switching rate. We have two rates applicable from McFaddin's plant at Houston shipside; one is a rate of 8¢ per 100 lbs. that applies on export cotton, and another is a specific switching rate of $8.10 per car which applies on all traffic. We can put any number of bales of cotton in the car to move at $8.10 per car. (R. 310). There is a similar charge at Galveston under like circumstances. On cotton moving to Houston on the common point rate of 80¢ from a point on the S. A. & A. P. Railroad or Trinity & Brazos Valley Railway, going to the McFadden plant, our switching charge would be a mileage switching charge running from $1.85 to $3.15 as a maximum. If it went to Anderson Clayton's plant or any compress on the water

front at Houston, southside, the switching charge would be $8.10 per car. The common point rate of 80¢ would still apply for the local delivery. If that same cotton were moving to a local delivery point in Galveston, received from the S. A. & A. P., the T. & B. V., or any other line at Houston, we would receive a division of the 80¢ rate for our haul south of Houston, about 11¢ per 100 lbs. (R. 311). After the cotton is hauled to Galveston, and is to be placed to local delivery points in Galveston, we have a switching charge to absorb, if it is delivered to a point on tracks other than the I. & G. N. That charge which we absorb is $3.15, and the local delivery rate is 80¢ to that point, the same as the local delivery rate to Houston. The additional 50 miles of service does not cost the shipper any more than the additional three or four miles of switching down at the front. (R. 312).

[fol. 105] Shipside cotton at Houston moves down to the tracks on the wharf. Local delivery cotton to the Houston Compress Company, is delivered on the tracks on the west side of the Compress back of the compress warehouse, and back of the water front. It does not have to be switched out in berth order, or held for any particular delivery. In times past there has been occasionally a very great congestion of cotton traffic at Galveston, entailing detention to cars in the fall of the year, and when that occurs it is of great value to the shipper to have additional free time. In making up the average under the export free time, we take the average of the total number of cars handled in any given month. (R. 313). The rate of demurrage is $1.00 per car per day. On local shipments the rates, after 48 hours, are $2.00 for the first four days, and $5.00 per car per day after that time. The average of all cotton at the port during the time when there is no congestion must be within two days, and still there would be cases of shippers who had a very great delay with correspondingly little demurrage cost. Under the demurrage rules, the maximum credit on any one car is eight days or twelve days; on local export bill of lading it is 12 days; on through bills of lading it is 18 days. If we deliver cotton to the Houston Compress shipside, we charge the 83½¢ rate. (R. 314). When I said 80¢, I meant to the plant there. We do not consider the general average detention. Our switching charge to the

fifth ward, Houston Compress, is $3.15, (R. 315) and the distance to the long reach plant is about two miles greater. We think that the switching charges fixed by the Railroad Commission of Texas reaching the maximum at two miles, does not fit the conditions at the present time, and that the $3.15 switching charge is too low. We should make the long reach switching charge proportionately greater to make up [fol. 106] up for it I am speaking for the I. & G. N. only. There is a good deal of difference of opinion among the railroads themselves as to what the switching charges ought to be at Houston, and various places. (R. 316).

WITNESS J. S. HERSHEY

I am General Freight Agent of the Gulf Colorado & Santa Fe at Galveston, and have been such for about 20 years. I adopt in substance Mr. Booth's testimony concerning the application of the Interstate Tariff, Fonda's I. C. C. #135. Regardless of whether I think it is proper to apply the 80¢ rate on cotton moving to Galveston, there immediately switched to a high density compress, compressed immediately and then drayed directly to shipside, the Railroad Commission of Texas Circular #401 requires that it be done. We must make delivery on the points of the Galveston Wharf Company in accordance with the order of the State Commission. The cotton is a local Galveston consignment, and we handle it as such. What is done beyond our delivery of it to the high density compress or to any other point where it may be delivered on the Galveston wharf, is something we do not know anything about. It may go back to a compress or warehouse on the Island. I do not know what becomes of it. There is no necessity of our policing it to see whether it is exported immediately or not, because we are following and must follow as our legal department tells us the order of the Railroad Commission. (R. 318). Up to a short time ago, no cotton was delivered in that way. It was not customary to deliver cotton on the Galveston Wharf Company's wharf front tracks, except to a connecting line Steamship. The situation with respect to cotton first came about when the high density compresses were established on the wharf

front, which it is stated was the result of the establishment of a similar plant at Texas City, to which the intra-state [fol. 107] rate was also applicable. For a great many years we have had difficulty frequently in connection with the determination on other kinds of traffic as to whether or not the traffic was intra-state, or inter-state, as a result of this requirement of the State Commission.

I have not advocated the one rate plan. (R. 319). The point I undertook to make was that such an arrangement would always give to one point an additional privilege over what other points might have, an additional concentrating or handling privilege, and I concluded that Houston would not be pleased with any other point having a privilege it did not have. Our line has actually collected very little money during the last year for the second concentration privilege. Handling the cotton business on a second concentration, and paying a charge has not proved profitable. (R. 320). If we waived that second concentration charge, we would not lose much in dollars, but I think we would add very materially to our expense.

Cross-examination:

Giving the concentration privilege, involves the expense of switching the car in to the compress, the handling of the cotton, and the furnishing of another car to take the load out. It is particularly expensive when it is not at the point where the cotton is compressed. (R. 321.) I do not think that there is very much additional expense at the first concentration, where the cotton is compressed as against the compression of the cotton without the concentration. The making up of the claim and the inspection that is necessary is perhaps a very slight additional expense. The cotton could be policed at the compresses at the port in order to apply the proper rate, provided there were enough policemen there to watch it. I am not familiar with the checking of records at the compress. The first time the second con- [fol. 108] centration privilege was ever established, it was established at Houston, and the purpose of it was to put the port of Houston on a parity with the natural privilege of concentration which was in effect at Galveston, and before Houston became a port. Houston will insist upon as many privileges of concentration as are had at Galveston,

including this natural privilege. (R. 323.) The Texas Railroad Commission reduced the rate on cotton from 54¢ to 51¢ per 100 lbs. from common point territory. The carriers thought that those reductions should not have been made. They were required to apply them so far as the Texas Railroad Commission's jurisdiction went. Seeking to increase the rate, they found that the drayage charge at Galveston at the time was 15¢ per bale. They found that they could increase their rate no higher than the combination of the intra-state rail rate, and the drayage rate at Galveston, which provided a shipside rate of 51¢ plus 3¢. That was the rate based upon which a natural second concentration privilege prevailed at Galveston, 3¢ higher than the local rate, and that was the figure that we could put into effect at Houston to make the charges at the two places the same. I do not subscribe to the waiving of the second concentration charge. The second (R. 234) concentration of cotton ought to be paid for. It is uneconomical to go beyond the compress point to concentrate cotton, and if a second concentration is necessary, the man that benefits from it ought to pay for it. I do not know whether Anderson Clayton & Company would be able to take possession of that class of cotton and deliver it to shipside without additional cost. I assume that they will have some additional cost, but I think that whatever our rule is at Galveston, must also be the rule at Houston. As long as this Railroad Commission of Texas Circular remains in effect, which requires the delivery under the intra-state rate at a point on [fol. 109] the Galveston Wharf Company's track, I cannot see how it is possible for them to make a rule that would not permit at Houston cotton or any other traffic to be handled on the municipal track, for instance, or Mr. Booth's track under the same conditions. (R. 325.)

I am making a statement for the Galveston lines and not for the Houston lines. The physical handling of freight is under the operating department of our road and not under the freight department. All cotton arriving in Galveston, when it is a carload of cotton destined to one delivery point, is always on the inbound movement delivered in cars. Cotton that arrives in the mixed cars, and is handled at the mixed platform, and is sorted out one bale to Mr. Moody, one bale to Mr. Kempner, etc., is the only cotton that is

handled by drays on the inbound movement. What I have to say will concern only the movement of cotton from the warehouses and compresses to the shipside compresses, or to the shipside, or to what further destination there is an obligation on the carrier to move it. The big cotton months are usually, August, September, October and November, sometimes December. (R. 326.) These are the months when we also have a large movement of export draying, which we have occasionally at Galveston. Our facilities at Galveston will take care of more than the average business, but will not take care of the peak business. During these months we need all the cars available to bring down cotton and wheat from the interior, Kansas and Oklahoma. In order to conserve our equipment, the cars, the wharf company's tracks and yards, and the facilities at the platform, for the unloading of cars at the wharf company's shed, the operating department has reached the conclusion that it is desirable to pay 18¢ per bale for the movement of cotton where there is a further obligation on our part to do so, [fol. 110] more desirable than to take a car out of our service that is needed in the interior and to use the engine, the tracks, etc., for that purpose. (R. 327.) I cannot testify whether it cost more or less, but they deem it good judgment to handle it that way. (R. 328.)

WITNESS J. O. HAMILTON

I am General Freight Agent for the Texarkana & Ft. Smith Railway. I have been in that position since May 1917. I am testifying with regard to Port Arthur. The situation at Port Arthur is different from that which exists at Houston or Galveston. Port Arthur is in the Southeastern portion of the state on the west side of Sabine Lake, about 16 miles inland from the Gulf. The Gulf is reached by a canal and then through Sabine pass, the wharf, docks, and other facilities at Port Arthur, as well as the land on which they are located, being owned by the Port Arthur Canal & Dock Company. They are served by the Texarkana & Ft. Wmith Railways. (R. 329.) Both of them in connection with the Kansas City Southern, from practically

one system. There are no cotton exporters or shippers at Port Arthur. They have no warehouse facilities there either on the water front or back of the water front. The facilities for handling cotton there is the cotton warehouse of our company, which is approximately 22 ft. long and varies in width from 90 to 106 feet. All of the cotton which goes through Port Arthur is handled on a through export bill of lading from the interior to a foreign country, or on a through domestic bill of lading if it is going to the New England or eastern spinning points via our coastwise service. There are no compresses, either standard or high density, at Port Arthur. We have a small electrically operated compress which is used for reconditioning cotton where the bands are broken or the buckles come off so that they may be reconditioned and put on the boat in proper [fol. 111] shape. The movement of cotton through Port Arthur has diminished considerably in the last few years as a result of the larger concentration at the Gulf Ports which is increasing from time to time. It will be necessary for us, in order to share any substantial way in the handling of cotton, to have some brought through (R. 330) Port Arthur locally for warehousing, either on our facilities on the water front, or in facilities which may be later furnished by shippers or exporters, either on the water front or away from the water front. Efforts to get exporters and shippers interested in Port Arthur in this respect have been made, and are being made, and any order which the State or the Interstate Commerce Commission may issue with regard to privileges. allowances etc., in the handling of cotton at the other Texas ports, should include Port Arthur. Up to the present time, Beaumont has not been a cotton port. We have never handled any through Beaumont—either export or coastwise. There are export sailings from Beaumont but no coastwise sailings. I think that statement with regard to our lines is also true with regard to the other roads which serve Beaumont. (R. 331.)

Witness F. E. Potts

I am Traffic Manager of the Port Arthur Chamber of Commerce, which position I have occupied since July 1st,

1921. My organization has been working with the Kansas City Southern in trying to regain a part of the cotton business that formerly existed at Port Arthur, and joins with them, and for its own account, in the request that whatever action is taken respecting the other ports in this case, be made effective at Port Arthur, so that the same condition may exist there as exists at the other ports.

[fol. 112] WITNESS E. H. THORNTON

I am Traffic Manager of the Galveston Exchange and Board of Trade, and of the Galveston Commercial Association. I have been connected with these organizations since March 1, 1919.

(Mr. Fulbright:) (We admit the qualifications of Mr. Thornton as a Traffic Witness.)

My Exhibit A-6 is a map showing the location of the various warehouses, cotton warehouses, and compresses at Galveston, which have compresses, either standard or high density. Where there is no cross marks with the warehouse, that will indicate that there is no compress in operation there.

My Exhibit A-7 is a comparative statement showing a list of the cotton warehouses and compresses at Galveston, Texas, the cost of draying cotton from warehouses at Galveston to shipside, as well as the cost of switching cotton from warehouses at Galveston to shipside as reflected in the published tariff of the carriers. The switching charges shown are the intrastate switching charges. The carriers at Galveston do not publish an inter-state switching charge. This exhibit shows that the cost to the shipper would be (R. 333.) substantially the same whether he drayed his cotton from the warehouses to shipside or whether he switched it from warehouses to shipside. These switching charges may or may not represent the actual cost of the service performed by the carriers.

My Exhibit A-8 is a reproduction of note C of Texas Lines Circular #1-C Item 285-A. This Circular is not filed with the Interstate Commerce Commission, but it contains the charges assessed for switch movement, and this

exhibit explains switching charges as shown on my Exhibit-A-7. It gives the authority for the switching charges as shown on that Exhibit. Except for account of the Gal- [fol. 113] veston Wharf Company, they make a charge of $8.00 per car where they perform the service entirely over their rails. (R. 334.) This shows the cost to the shipper if he elected to separate the two moves into the plant and out of the plant to shipside Galveston. If he were entitled to a transit privilege in Galveston, there would be no such charge collected. (R. 335.)

My Exhibit A-9 is a comparative statement showing the production of cotton in bales in Texas and Oklahoma for the seasons 1914, 1915, to and including the seasons of 1922 and 1923. It shows the number of bales of cotton received in Galveston, Houston, and Texas City, Texas separately, the number of bales exported direct from these three ports separately, and the number of bales shipped coastwise from these three ports separately during the same period; also the total number of bales shipped export and coastwise from the same ports. It shows that principally Galveston, Houston and Texas City are active competitors for this cotton traffic both export and coastwise movement, and that any advantages that may be extended to any concentrator at Houston would react against the concentrators at Galveston and other ports. Effective August 1st, 1910, the Railroad Commission of Texas reduced its cotton rates from Texas common points to Galveston from 55¢ to 51¢, and during the period August 1st, 1910 to November 16th, 1910 the shipside rates from Texas common points to Galveston remained at 55¢ while the domestic rate was 51¢, making a difference between the domestic rate and shipside rate of 4¢ per 100 lbs during that period. Effective November 16th, 1910 in E. Wiatt's I. C. C. #9, the export or shipside rates on Cotton from Texas common points to Galveston were reduced to 51¢. This rate also applied on cotton for depot delivery or local warehouse delivery back of the [fol. 114] water front. That condition remained in effect until September 1917, when in supplement #6 to F. A. Leland's I. C. C. #1185, the Texas carriers established a uniform difference of 3¢ per 100 lbs. in making their rate on cotton shipside Galveston over the domestic delivery rate applying to that port, and I think that the same difference

was added at the other Gulf Ports. This difference of 3¢ represented at that time the approximate average cost of draying cotton from local compresses and warehouses at Galveston to shipside. Therefore, I am safe in stating that, the 3¢ was added as an equalizer between the port concentrator and the interior concentrator. It did not purport to represent any (R. 337) additional cost of service performed by the carriers in making delivery to shipside over and above what it cost them to make delivery to the local compresses and warehouses back from the water front at Galveston. So far as we can determine, there is no additional cost to the railroad in making deliveries to shipside Galveston, as compared to making deliveries to the compresses and warehouses at Galveston. This method of equalizing rates was first approved by the Interstate Commerce Commission in the Louisiana Cotton Case, I. & S. Docket 955, 46 I. C. C. 462. In that case the Commission stated further that if any greater arbitrary should be added to the rate than was represented by the amount it cost the port concentrator to dray or transport his cotton from the Warehouse at the port to shipside, this would result in discrimination against the interior concentrator and give undue preference to the port concentrator because the latter would be able to get his cotton concentrated (R. 338) for delivery at shipside at a lesser cost than the interior concentrator. The Commission further held that it would be an unjust discrimination against the port concentrator [fol. 115] should the carriers add an arbitrary figure to the domestic rate which represents a lesser cost than the port concentrator is required to pay to dray or transport his cotton from the warehouses at the port to shipside, because this would enable the interior concentrator to deliver his cotton at shipside at a lesser cost or rate than the port concentrator or shipper. This priciple was reaffirmed in a recent decision in 77 I. C. C. 388. Until recently there had been no complaint from either the interior concentrators or shippers, or the port concentrators or shippers about being charged a higher rate for shipside delivery than they the carriers applied on cotton for local depot or domestic delivery. The actual transportation service performed, in our opinion, was the same in either case. (R. 339.) The [fol. 116] interior shippers realize that it would cost the

port concentrator 3½¢ per 100 lbs. or approximately 18¢ per bale additional to get his cotton delivered to shipside. The interior concentrator therefore felt that there was no unjust discrimination. The arrangement was satisfactory until recently, when certain large cotton firms, one in particular at Houston, decided to construct a warehouse immediately at shipside Houston, for the purpose, no doubt, of obtaining an advantage over everyone else. (R. 340.) As soon as learned of that plan, we called a conference with the officials of Galveston Railroads, and pointed out to the carriers that the man located at shipside Houston, would be able to obtain delivery of his cotton to ship tackle at a cost which would approximate 18¢ per bale less than it would cost the concentrators back of the water front at Galveston, as well as the interior concentrator and shipper. It was our position then, and in the Weatherford Crump Case, that there should be a higher rate on cotton delivered to shipside warehouses than is assessed upon cotton delivered to a warehouse back from the water front, and that there should be no discriminations between deliveries to shipside warehouses (R. 342) or piers, whether they are located at Houston, Galveston, or any other port. The carriers assess a higher shipside rate on cotton delivered to the warehouse at pier 35 at Galveston, 83½¢ per 100 lbs. than on cotton delivered to Anderson Clayton's shipside plant at Houston, for which they would assess a rate of 80¢ per 100 lbs. The services performed are identical in my opinion. If the carriers would assess the higher shipside rates on every bale of cotton delivered to a shipside warehouse, at which a vessel can or does take on, or discharge cargo, and at which the steamship agents sign for cotton, according to the principle laid down by the Interstate Commerce [fol. 117] Commission in the two cases referred to, that would remove the unjust discrimination and place all concentrators and exporters of cotton on an equality, regardless of their location, whether at the port or on the water front, or back of the water front, or at interior points. We request that the commission give first consideration towards working out a plan under a two-rate (R. 343) theory, whereby all concentrators and exporters will be equalized. A shipside warehouse should be designated as a warehouse at which an ocean vessel does call and take on

or discharge cargo, and at which steamship agents sign for and take possession of cargo. The undue preference and discrimination can be removed by the application of one rate on cotton to the ports, whether for export or coastwise movement beyond, or for local or depot delivery. There is a movement of cotton to and through the ports that is, in our opinion, strictly intra-state, and that movement is of considerable volume, particularly cotton that has actually changed ownership at the port. The factors at Galveston, for instance, advance money, sometimes 60% on cotton bought in the interior, store in their warehouses for a certain length of time and then sell it to an exporter. (R. 344). That is clearly intra-state traffic. I believe that there are thousands of bales of other cotton that actually changes ownership at the posts. (R. 345.) Where there is a change of ownership at the port, which is an actual bona fide change, I think the cotton should be entitled to the intra-state rate regardless of its subsequent position. For several years prior to November 1917, the same rate was applied on cotton to the port of Galveston, whether for export, coastwise, or locally, provided for a refund which was approximately the average cost of draying cotton from the warehouses and compresses at Galveston to shipside at that time. While we prefer the two rate plan as I have outlined, as an alternative, Galveston will [fol. 118] accept the one rate plan on condition that the carriers make provision in their concentration tariff that where cotton has to be drayed, switched, or barged from the warehouses, or compresses at the port to shipside, the actual cost of performing this service will be refunded to the shipper, not to exceed 20¢ per bale. This allowance should be made on all cotton that is concentrated or stored in the warehouses located back from the water front at the port, and no extra penalty should be assessed because the same may have been concentrated in the interior before being shipped to the port. Such a provision will equalize the port concentrator, whether located at shipside or back from the water front, as well as the interior concentrator. Galveston will agree to the one rate plan on that condition, but only as an alternative (R. 348). It is our position that the railroads are violating their tariff provisions when they apply the local rates to the shipside warehouse of the Hous-

ton Compress Company, or the Anderson Clayton Company. The fact that this cotton is shipped to a shipside warehouse is, in my opinion, indicative of the movement by water beyond. The purpose of a shipside facility is to move the traffic out by water. (R. 349.) Delivery to the shipside warehouse gives the railroad sufficient notice that this traffic should be termed shipside traffic and should take the shipside rate; it is the same as cotton delivered to a shipside pier at Galveston on which the railroads without question assess the shipside rate. In addition to the plant of Anderson Clayton & Company, there is under construction at Houston another shipside plant, that of Alexander, Sprunt & Company. I understand that actual construction is now under way with the docks immediately adjacent to the warehouse, and it is the plan of this company to demand the same privileges and rates as have been ex- [fol. 119] tended to Anderson Clayton & Company. It will be only a question of time until every large cotton shipper that could afford it would have to seek such a shipside location in order to meet the competition of Anderson Clayton & Co., who are the largest cotton shippers in the world today. (R. 350.) I have a letter from the President of the Houston Compress Company, Mr. Fulbright, stating that that company was organized as a compress, warehouse and wharf company, and that they did a general wharf and dock business. In Texas Lines Tariff 21-E, A. C. Fonda's I. C. C. 134, which is the local terminal absorption tariff of the railroads serving Galveston and Texas City, Beaumont and Orange, Texas, in Item 780, under Column 2, note 2, this clause appears: "No absorption will be made at Houston except when the services performed by the rail carriers, or their authorized agents, or concentrators, or by any firm, person, or corporation, with whom the carriers may have executed formal written contract secured by a surety bond for the performance of such service—" and in this item 780 the railroads say that they will absorb the terminal charges of the Houston Compress Company at Houston, as well as the terminal charges of the municipal wharves and docks at Houston, in addition to the terminal charges at other ports, all of which bear out, in my opinion, my statement that the Houston Compress Company is in fact a water site facility, as much so as the piers of the Galves-

ton Wharf Company at Galveston. With that evidence before the railroads, they, in my opinion, should assess the shipside rates on the cotton that goes into that shipside facility. (R. 351.) In the final analysis, the man at shipside has an advantage over everybody else of at least 18¢ per bale. To illustrate, cotton consigned to Anderson Clayton & Company's shipside plant at Houston, pays an 80¢ rate from Texas common points. They have it compressed to high density, and we will assume that costs them about 50¢ per bale. By doing so, they save [fol. 120] 75¢ per bale in the ocean rate. It does not, in our opinion, cost Anderson Clayton & Company any additional amount to put that cotton to shipside. On cotton moving from the same point in Texas common point territory to Mr. Kempner's warehouse at Galveston, Mr. Kempner pays 80¢ per 100 lbs., has it compressed to high density, which will cost him about 50¢ per bale, and by which he saves 75¢ per bale in the ocean rate. But Mr. Kempner, in order to get that cotton to shipside, must pay 18¢ or 20¢ per bale additional. The same would apply to cotton which Mr. Kempner might handle for other concerns. (R. 352.) The saving of 75¢ per bale in the ocean rate has nothing to do with the case, since the man at shipside realizes the same saving. So long as it does not cost the man at shipside any additional amount to put his cotton to within ship tackle, he has a clear advantage over every other cotton exporter and shipper of 18¢ per bale at least. I know that the steamship agents in Galveston are anxious and willing tomorrow to wipe out this difference between the high density and the standard ocean rates on cotton. They were attempting to do that a year ago, but Anderson Clayton & Company, as well as other large cotton shippers in Houston and Galveston who own high density compresses, brought such pressure to bear on the steamship agents that they withheld the elimination of that differential temporarily. They have shown me, personally, actual figures which show (R. 353) that they could make more money by handling standard compressed cotton than by handling high density cotton. The difference is liable to be wiped out today. It is only by reason of their fear of these large shippers that they have not done it already. They are waiting for their chance to wipe it out. If it had not been

for the large shippers, the differential would have been shrunk to such an extent that it would not be of any advantage. It is our contention that there is not much, if any, difference between the cost of handling the cotton from [fol. 121] an interior shipper through the cotton warehouses at Galveston to shipside Galveston as compared with (R. 354) the cost of handling cotton from the same interior country shipping points through the interior warehouses, for instance, located at Waco, and sent to shipside, either Galveston or Houston, and when I say shipside Houston, I include the Houston Compress Company's shipside facility. Therefore, it is our desire that the concentrator at the port back from the water front, should not be forced to pay any more to get his cotton delivered to shipside Galveston, than it would cost a shipper to handle cotton through a warehouse at Waco and sent to shipside Galveston and vice versa. We think it ought to be equalized both ways. I don't think the man at Galveston ought to have an advantage over the man shipping through facilities at Waco. (R. 355.) In the Weatherford Crump case, the carriers base their case almost entirely upon the through bill of lading. My investigation, including letters to steamship agents, as far as it has gone, shows that about ten or twelve per cent of the cotton that is being handled today is on through export bill of lading. It is our contention that on cotton moving to the ports on local export bills of lading, there is not any additional service to speak of performed by the carriers over and above the service performed on local domestic delivery cotton. (R. 357.) In regard to the additional free time that is allowed on local export bills of lading cotton, I call attention to the fact that New Orleans, La., today allows four days free time on domestic depot delivery cotton. The authority for that is item 19 of W. P. Emerson's I. C. C. 77, showing that four days free time is allowed at New Orleans on domestic compressed cotton and seven days free time allowed on export cotton. We request that if the carriers continue to apply lower domestic rates on cotton delivered to shipside [fol. 122] warehouse of Anderson Clayton & Company, or any other shipside facility at Houston, the carriers should not be permitted to charge any different or higher rate on cotton delivered to the shipside warehouse of the Galveston

Wharf Company at Galveston, whether that cotton is concentrated at the warehouse at Galveston, or delivered to shipside Galveston, or concentrated in the interior and shipped direct to the shipside warehouse at Galveston. There should be no difference between the delivery of cotton to pier 35 at Galveston from the delivery of cotton to the shipside facility of Anderson Clayton & Company at Houston, or any other warehouse that may be constructed at Houston. (R. 358.) I am using pier 35 as an example; that applies to any of the shipside piers. It is my contention that the carriers are not living up to their tariff when they do not assess the high shipside rate on this traffic, and that it is creating an unjust discrimination against other shippers and giving undue preference to those having a shipside location. The first second concentration privilege was established at Houston before Houston was a port, for the purpose of placing Houston concentrators and shippers on an exact parity with the Galveston concentrators and shippers in regard to cotton. (R. 359.) The charge assessed for this second concentration at Houston was fixed at a figure that exactly represented the average cost of draying cotton from the warehouse in Galveston to shipside Galveston, and did not purport to represent any cost for additional service performed. That has been the policy for many years, and we think that it is good for the cotton trade as a whole and for the cotton farmers and producers in particular to create and encourage this competition rather than to restrict it. In case it is decided that the only way to remove the unjust discrimination is to establish one rate to the ports, speaking for Galveston, we desire to have [fol. 123] the railroads provide in their tariff that on cotton which is handled from local warehouses at the ports to shipside, when for export or coastwise (R. 360) movement beyond, that the railroads will absorb the cost of making that delivery, not to exceed 20¢ per bale, that arrangement to apply also at Houston for the benefit of the warehouses back from the water front at Houston when that cotton is delivered to the vessel at Houston. In my opinion, that will not be an injustice against the interior shipper, and it will exactly equalize the concentrator back from the water front, with the concentrator or exporter on

the water front. If you penalize the so-called second concentrated cotton at Galveston, or that handled by the warehouses back from the water front at Houston, you give an advantage to the concentrator and exporter at shipside of 18¢ per bale on that cotton, which will be very serious in connection with some shippers, for instance, the shipper who testified that 70% of his cotton was bought from interior concentrators and shippers. The privilege that we request would really encourage the building up of interior markets which is the real back bone of the cotton business. The interior markets have been built from this practice of equality that has been in effect for many years, and they should not be deprived of that privilege in the future. (R. 361.)

Cross-examination:

I would not say that the practice of the compresses in absorbing the drayage to the water front has been a disturbing factor. The real disturbance has been brought about by the establishment of shipside warehouses at Houston by large cotton firms and exporters. It has every cotton shipper in Texas worried today as to what the ultimate outcome is going to be. (R. 364). The compresses are really compressing cotton for 54½¢, and if the shipper elected to do so, he could dray it to shipside for 18¢ himself. The shipper is paying 18¢ per bale in that combined charge [fol. 124] that the compress quotes him. He is still paying 80¢, the domestic rate plus 18¢ per bale to get it to shipside. (R. 365). The competition between the compresses is not a factor; it has reduced the cost of compression to the shipper to 54½¢ per bale at the port, but the shipper still pays 18¢ per bale for drayage. I did not testify that I thought the one rate plan was proper; my preference is for the two-rate plan; my statement was intended to explain my position in case the two Commissions decided that the one rate plan was the only plan that could remove the discrimination. If the Shipside High Density Compresses are considered by this Commission as a shipside facility, I would say that a shipment of cotton coming from Dallas consigned to Galveston, immediately upon arrival ordered switched over to the shipside density compress, should bear the export rate, and when the Shipside High Density Com-

press drayed this cotton to another point along the water front, the railroads should refund to them the actual cost, not to exceed 18¢ per bale; but when the shipside compresses truck this cotton from their compress immediately to the ship, which may be berthed adjacent to this compress, then the shipside compress should not have any refund.

I do not know that the disadvantage is greater in the case of E. H. Perry & Company because it does not own a compress. I know that some of the warehouses in Galveston, like the Southern Products Company, have adopted the policy of going after that cotton, taking it to their warehouse, compressing it, and delivering it to shipside with no additional cost to the man who does not own or operate a compress. (R. 369.) McFadden Bros. absorb the cost of draying from Tarner Steele's warehouse out of the compression charge of 54½¢ per bale. I would not object to having the Houston Compress at Houston, and the shipside compress at Galveston covered by the same regulation. The Shipside Compress, since it has to dray farther to the [fol. 125] ship than the Houston Compress, should be refunded the actual cost of drayage, not to exceed 18¢ per bale. (R. 370). The date of the Railroad Commission of Texas Circular #401 was March 16th, 1897. I am sure that the prime purpose of that circular was to cause the Galveston Lines to absorb the Galveston Wharf Company's switching charge. At that time there was no difference between the domestic and the export rates. This circular does not designate cotton only, it says "all traffic." (R. 371.) Circular 401 is still in effect. I would not say whether or not it would have been a violation of circular 401 to have required the collection of a rate in excess of 80¢ per 100 lbs. at the shipside density compresses on the Galveston Wharf company's track on shipment billed local to Galveston. I am not a Lawyer. (R. 372). I stated that if the 80¢ rate was the proper rate for application locally to delivery points on the Galveston Wharf Company's tracks at Galveston, cotton must be consigned for storage to the sheds of the Galveston Wharf Company, and handled on an 80¢ rate. It has been the custom of the Galveston Wharf Company not to permit the storage of freight in their sheds, but they are willing to change that custom today. (R. 373). I know something about the cotton business in Galveston for

the last five years. I know from experience and from what I have heard here that the proportion of cotton that moves on through export bills of lading is very small. That cotton moves to shipside at the 83½¢ rate. (R. 374.) I am not a shipper and could not say what would influence a shipper one way or the other. I know in a general way that a shipper working on a small capital, would prefer the through bill of lading if he could get his money quickly by using it. I said that under item 200 of Texas Lines Tariff 17, I. C. C. 135, cotton could be concentrated at the compresses and [fol. 126] warehouses back of the wharf front at Galveston, and subsequently shipped to the warehouses on the water [fol. 127] front under a concentration privilege and thus get the benefit of an 80¢ rate. I did not say to the High Density Compress. (R. 375). I refer to the shipside warehouses at piers 10, 13, 14, 35. Such cotton would be subject to the concentration charge of 6½¢ if the shipper elected to connect it up with the inbound movement, but the railroads cannot police and see that it is connected up with the inbound movement and the higher rate applied. He could send it to the shipside warehouses and say that it was for storage. He may or may not have already booked that cotton on a steamship. (R. 376). My contention is that he can ship it to the warehouse back of the water front and then re-ship it to the shipside compress on the 80¢ rate, under the concentration rules. If it is not free cotton, it would then be subject to a second concentration charge. I was talking about free cotton. The amount that has been concentrated before in the interior varies as to various shippers. (R. 377). A large part of Mr. Reed's cotton moves to Galveston, compressed in transit, without having a concentration privilege before it reached Galveston. If the same cotton had had a concentration at an intermediate point north of Galveston somewhere it could move on to almost any destination in Galveston if it wanted to without any penalty; it could go to the shipside warehouse. (R. 378). If the railroads make a delivery of cotton first concentrated at Galveston to a pier at Galveston, on a bill of lading that does not have a note thereon that it is for export or coastwise movement, you have an inter-state application. The demurrage rules would be different on export traffic. (R. 379). The switching charge is insignificant, and the

difference at Galveston is due to the fight between railroads and wharf companies. There is no difference at Houston and no difference at New Orleans.

[fol. 128] I think the equalization is good for the cotton trade as a whole. The more competition the better the price anybody gets for a commodity. (R. 380). I am not advocating an increase in rates. I am advocating an equalization of buyers and exporters and the cost would be the same under the plan I suggest as it is today. (R. 381). I do not think that equalization of ports is involved in this case. If it is I have other evidence in Galveston I want to bring in.

The cotton concentration company has a warehouse on the premises of the Galveston Wharf Company back from the pier (R. 382), about 200 feet. On the map in my exhibit, the shaded area next to the water front is the pier. The shaded area marked "Old Moody Compress" is a cotton warehouse operated by the cotton concentration company. There are two high density compresses there. I do not know anything about how the cotton concentration company does business. A steamship agent will not accept cotton and sign for it in the warehouse of this old Moody compress. (R. 386). If cotton can be hand trucked from this warehouse of the cotton concentration company, I would consider it a shipside facility, and I think the cotton concentration company should pay the shipside rate on cotton that is being merchandised there, the same as Anderson Clayton Company. (R. 387). The Shipside Density Compress Company should pay the shipside rate and get a refund for the actual cost of draying cotton to the ship. On the two rate theory, I would apply the shipside rate on all cotton delivered to a warehouse at which a vessel will call for that cotton, and at which a vessel does commonly dock and take on or discharge cargo. (R. 388.) The cotton concentration company concentrates cotton at the old Moody plant. If a merchant has a space assigned to him in a shipside warehouse, he should be charged a higher rate than the man who is doing the same business in a warehouse somewhere else, because in the final analysis the man back from the water front has to pay that difference to get [fol. 129] to the shipside. You might say that it gets down to the question of location, of whether or not you have to

pay more costs to get to the shipside. I would not say that it is a question of geographical location. It is a question of bringing about an equality between exporters and shippers. The Louisiana cotton case and Docket 11,965, and the Weatherford Crump case, none of these cases raised any question as between back of the water front compresses and the water front compresses. (R. 390). The question was not raised until Anderson & Clayton built their shipside facility at Houston, and they are about to disrupt the whole plan of equality that has been in effect for many years and was satisfactory to everybody. In the brief I filed in the Weatherford Crump case, in which I stated that the difference in the demurrage charges rules and regulations on export as against local delivered cotton in Galveston, was sufficient to warrant a difference of at least 3½¢ per 100 lbs. in the export over the local delivery rates, not to mention the other additional expense incurred in the handling of direct export shipments, I was referring altogether to through export bills of lading. I affirm that statement now. I don't think that the man shipping on the through export bill of lading should be required to pay a higher charge to get his cotton delivered to Liverpool than anybody else. I think that those additional costs should be disregarded in order to place him on an equality. It is a question of discrimination almost entirely. I think there have been shipside density compresses on the water front at Galveston about three years. (R. 394). I do not know when the Turning Basin Compress began operation at the Municipal Wharf in Houston. Both were in operation at the time of the hearing at the Weatherford Crump case. In Docket 15,803, Galveston Commercial Association vs. [fol. 130] various carriers, I advocated the same rate to shipside Galveston as Houston has to shipside. In Docket 11,965, which was heard in 1921, we advocated the two rate [fol. 131] plan, providing for rates to shipside which were higher than the rates for local delivery. (R. 396). We have always advocated that plan, up to this time, and I think the decisions in Docket 11,965, and in I & S Docket 955 approved that plan. It was an ideal plan up until recently. (R. 397). In reference to the compresses paying for the drayage from warehouses which do not have compress facilities to the compress, they absorb that charge out of

the 54½¢ per bale which they get for compressing. I know that McFaddin does it and I assume that the others meet the competition. The compresses of necessity have to fix their charges to meet the difference in the ocean rate. (R. 399). I took the position in my former brief that, so far as Galveston was concerned, there was no discrimination between the local concentrator who uses the facilities of the shipside density compress company at Galveston, and the interior concentrator who consigns his cotton through to Galveston for export, because of the fact that the shipper actually pays 18¢ per bale more to get his cotton to shipside from the high density compresses, and that brought about an equalization. My information is that the Texas Farm Bureau uses the old plant or the back of the water front plant of the Houston Compress Company in Houston. I do not know whether or not any Farm Bureau cotton moves to the Long Reach Plant of the Houston Compress Company. (R. 401). I have not investigated the handling of cotton on the wharf of the Houston Compress Company direct for export since June, about a week before the plant was opened up in July. My information is that the steamship agents are signing for cotton and accepting the cotton in the warehouse of the Houston Compress Company, and at their expense are putting their cotton aboard vessels. Our complaint was started in this case shortly after we received press notices and information that the Houston Compress Company was contemplating building this large facility, and after we received information that the Houston Compress Company had spread all over Texas, asking [fol. 132] shippers to come to shipside and use their facilities and make a saving of so much per bale. They solicited a lot of firms doing business in Galveston. (R. 402). My organization, the Cotton Exchange, then sent every cotton shipper in Texas a copy of our petition to the Interstate Commerce Commission, calling attention to this situation and alleging discrimination. I think that the President of our organization also sent out a circular letter to cotton shippers calling for their assistance. We wanted to know the facts; Houston told it one way and we wanted to know the other side. The Houston Compress Company are sending out circular letters soliciting business every week, practically. (R. 403). I have seen a circular letter issued by

the Houston Compress Company, advertising the advantage in rates that they enjoy over Galveston. What I objected to in the letter written in 1921 was the application of the shipside rates on cotton delivered to the cotton concentration warehouse #41. (R. 404). My position was that at those warehouses that were set aside for use by the cotton concentration company, the steamship agent would not sign for the cotton, and transport it to the ships at their expense, and therefore, they should not be designated as a shipside warehouse. But as I see it now, that is hard to get away from. I don't think you could make a different rule for those warehouses, if the ships can dock there and take cargo, and my point was that the steamship agents should not accept cargoes of cotton in the warehouse and transport it at its expense to the ship. If the cotton concentration company induced the ships to sign for cotton stored in the old Moody Press, I would think that it was a shipside warehouse. It would all depend upon what arrangement could be made with the ship agent, because that relieves the ship of the expense of placing that cotton aboard ship and that is the issue in this case. (R. 405). If that cotton was to [fol. 133] be shipped all rail, he gets his money back by concentration.

In all cases where 83½¢ is mentioned as a shipside rate, there is an added expense for wharfage, which is placed against the cotton in order to put it in reach of the ship tackle. That is true at all Texas ports. (R. 406). On coastwise cotton moving via the Morgan & Mallory Line, the Steamship lines absorb the wharfage. The wharfage at Houston is 1½¢ per 100 lbs., at Galveston 2¢, and New Orleans 3/4¢ per 100 lbs. They call it a tollage at New Orleans, but it is the same. It is a charge for passing over the docks. Cotton delivered on a local rate of 80¢ must actual-bear the expense of movement from compress or warehouse to shipside, plus the wharfage charge, and I think that that expense should represent the difference between the ship-side rate and the local delivery rate, assuming that it is 3½¢. (R. 407). I think the line of demarcation as between the up-town compresses entitled to the local rate and the shipside compresses or warehouse which should be sub-jected to the shipside rate, is the ability of the compress to effect delivery to the ship in its own warehouse. (R. 409).

If the Steamship Company signs for the cotton in the warehouse of the Turning Basin Compress Company, I would say that it is a shipside compress. Wherever the steamship companies accept cotton, you have a water front compress.

WITNESS HORACE BOOTH

I wish to correct my testimony of yesterday with reference to the switching charge of $3.15 from the connecting lines to the Fifth Ward Plant of the Houston Compress Company, and with reference to the $8.10 charge to the shipside compress. (R. 411). I want the record to show clearly that we do not regard either the $3.15 charge, or the $8.10 charge as being compensatory for the services rendered.

[fol. 134] WITNESS J. S. HERSHEY

When I stated that the second concentration privilege was not used to any considerable extent, I meant as far as the collection of the 6½¢ charge was concerned. I am informed that it is in fact used to a considerable (R. 412) extent and the traffic is drayed perhaps in Galveston rather than moved under the railroad's second concentration privilege. Perhaps that is also true at Houston. The interior concentrator will claim and endeavor to get just as many privileges as are permitted. Since the concentration does occur at Galveston, even though we don't get the money for it, we will perform a service for it. I think we have more privileges on cotton generally than we ought to have. Each one is an expensive privilege and costs money. If another concentration privilege was allowed at Galveston, it would be natural and proper for the Houston interests to claim another concentration privilege. (R. 413). I do not want to leave the impression that an improper situation exists. I am informed that there is a considerable quantity of cotton that moves under the transit arrangement, due to the fact that the identity of the cotton is lost at the transit point, that there is a large quantity of it that moves and is concentrated a second time. I was informed

recently by a very large cotton operator that more than 40% of the cotton that he handled was handled *was handled* with the second concentration privilege. I don't mean under the tariff, but that is actually what was done with it. If that second concentration privilege, or third concentration privilege is in effect at a port, there will be a demand for a similar privilege at interior points. (R. 414). There was the natural concentration privilege on cotton moving to Galveston, nothing that the railroad extends; to equalize [fol. 135] that there was permitted for many years, a second concentration privilege at Houston. Since Houston has become a water facility, they have a natural concentration just as at Galveston, but we have other points in Texas that are ambitious as cotton markets just as Houston and Galveston are. Probably the most important reason that the carriers don't get the revenue from the second concentration privilege, is the fact that the shippers and compressers back of the water front can get to shipside at a lesser cost, either by drayage or switching service, than by paying the second concentration charge. (R. 415). I do not mean to imply that the concentration is being taken and the tariff not applied, or that there is anything illegal or improper about it. The customary practice at Galveston is for the Galveston Wharf Company to assign to various steamships certain wharves. The tariffs of the Wharf Company provide that they will not engage in the storage or warehousing of freight, so that traffic delivered to the wharf company at their shed is traffic that is delivered at the depot of the steamship line in fact. We are considering any freight that we deliver to the sheds or wharves, is a delivery to a connecting line transportation carrier, and not to a local consignee. They do no warehousing in those sheds. (R. 417). All of the storage or warehousing of freight on the Galveston Wharf Company's property, as I understand it, is done under the supervision of the cotton concentration company. Mr. Guion, Traffic Manager of the Texas City Terminal Company, requested me to state for him that in your consideration of this matter, Texas City is also a port and on the same waters as Houston and Galveston, and in your consideration of the matter, Texas City be not lost sight of. (R. 418). If a second concentration should be given free, there would likely be a great deal

more than if an additional charge was made for it. There might be a great deal of additional service imposed upon [fol. 136] the carriers, and the one rate plan would provide an additional privilege. There might be a second, third, or fourth privilege at Galveston without a charge, whereas our tariffs provide for a six and one-half cent charge for the second one now. There is a large amount of cotton that moves into Houston and is concentrated in Houston, that is subsequently sent to Galveston to be sent out by ship for coastwise points, and if there were a second concentration in Houston, there would be a charge there of 6½¢. The traffic might then move on to Galveston and get a third concentration at no charge whatever. Under the two rate plan today, the man at the port under the Texas Commission's rate, and taking a local delivery can do what he wants to with the cotton, and that completes the transaction. Originally that was exactly what the second concentration at Houston was put in for, namely, to equalize with that situation. The coastwise lines have not been handling any considerable cotton to Eastern or New England Mills, but I understand the Southern Steamship Company is anxious to engage in the outbound business from Houston, and is anxious to have our tariffs amended so that they can enjoy the outbound business. The Morgan and Mallory Lines handle a large amount of business out of Galveston. I think that the 6½¢ for second concentration applies only to the second concentration and not to subsequent concentration. (R. 420). It would be difficult locating the cotton getting the subsequent concentration.

WITNESS K. E. WOMACK

I am President of the Houston Cotton Exchange and Board of Trade. I am a member of the firm of Sanders & Company, Cotton Exporters, whose principal place of business is at Houston. (R. 481). The Houston Cotton Exchange and Board of Trade is made up of cotton merchants [fol. 137] of all characters, including some bankers and other individuals outside of the cotton business. It also includes some cotton factors. It represents practically the cotton interest of Houston. We have members whose principal interests are at other points. In this proceeding I

appear particularly for the Houston interests, as represented by the cotton exchange.

My Exhibit A-10, prepared at my direction, gives a list of the compresses at Houston, the approximate value of those compresses, and the storage capacity and the switching charges, and the cost for moving in from these compresses to the water front. (R. 422). I am not a rate man, and have no personal knowledge of the tariff's provisions with respect to the rate. The switching charge per bale is the barge line charge. The Houston Compress Company and the Turning Basin Compress Company are so located that they may transport cotton from their warehouses to ships by truck. (R. 423). The Ship Channel Compress Company, I understand, is making improvements which will enable them to load on ship. The Magnolia Compress is located on the channel but has no provision to load on ship and is not making any. The Clinton Press of the Shippers' Compress Company is also on the channel, but has no facilities for loading. There are still other presses that may be served by barges, and in each case where there is shown in the exhibit a 14¢ per bale charge, it is possible to barge cotton from those compresses to the ships. (R. 424). The Ship Channel Compress Company, now erecting a facility known as the "Sprunt Compress," has been there about eight years I think. Our organization would like to see maintained the difference of 3½¢ between the export shipside rate and the local rate. These warehouse facilities are used by cotton merchants both at Houston and elsewhere, who are not directly interested in warehousing, I understand. (R. 425). There has been some difference of opinion in our organization as to whether [fol. 138] there should be a difference in the rate dependent upon the particular geographical location of a warehouse in the Houston Industrial District, but the general opinion is that geographical location should have no effect. If there is an advantage in the geographical location, I do not believe in artificially withdrawing that advantage. Our Company is interested in a compress and warehouse that is adjacent to the waterfront at which there are no wharves for serving ships direct. Our position is that that warehouse should take a local rate just as other warehouses in Houston. There would be nothing to hinder us from construct-

ing a wharf there. Our position is that the investment would not justify the expenditure of (R. 426) sufficient money to build a wharf. The revenue that I would get out of loading direct to steamers would not pay us to erect a wharf. I investigated the proposition and decided that it was not a good investment. I did not investigate far enough to determine whether the constructing and maintain- of wharves along the Houston ship channel is a matter of very great expense. It would be expensive. We did not obtain any actual bids for the work. We obtained estimates, and determined that the expense would be so great that it would not pay us. (R. 427) Sanders and Company purchases cotton at interior points and concentrate at Houston. We purchase a part of that cotton at compress points where cotton might be concentrated, and it makes no difference to us whether such cotton has been previously concentrated there or not. We make the price on that cotton by figuring the value of cotton in Houston and deducting the freight rates from the particular points. (R. 428). Generally speaking the difference in our bid would amount to the full difference in the freight rate. If [fol. 139] we had a lower freight rate based upon our ability to sell that cotton and rehandle it, we would bid a higher price at that point. Of course there are numerous other considerations that enter into price making. (R. 429). In buying cotton, fractions of pounds are disregarded. Cotton at present is worth 30¢ per pound. The selling of exchange and sudden fluctuations in the exchange market effect the price we pay for cotton, and such fluctua- [fol. 140] tions may take place between the time we buy and the time we sell. We always figure that the fluctuations will take care of themselves; it is up one day and it will be down the next. (R. 430). They may vary as much as 50¢ or 75¢ on a bale on sale.

The Shippers' Compress Company owns two compresses, one at Clinton and one up-town. Clinton is on the ship channel within the city limits of Houston; in getting the cotton to shipside from the Clinton press, we use a dray, barge, and a service switching. (R. 431). If the storage capacity of the Shippers' Compress Company was 100,000 bales instead of 30,000 bales, and if we could secure the business to operate that large a plant, I think we would be justified in establishing our own wharf.

Cross-examination:

At the bottom of page two of the exhibit, the barge rate is shown as 14¢ per bale from compresses to various wharves. There is also an item for loading on the barge for 10¢ per bale, and that means that the barge rate, plus the loading onto the barge is 24¢ per bale. (R. 433). The cost is not made any larger for unloading; they load from the barge direct to the ship. I said that all of the Cotton Exchange were in favor of maintaining the difference in the rates. I said there was some division of opinion as to whether or not a compress located on the water front and delivering direct to the steamship should have the same rate. I have heard the opinion expressed by members of the Houston Cotton Exchange that it is not equitable for a compress located alongside of the water front, that can make delivery to the vessel, without drayage, to enjoy the same rate as compresses that cannot effect that delivery. I do not think there are many members who believe that. There are quite a number (R. 434) who would like to see a higher rate charged from a competitive standpoint, because we usually like to stick our competitors as much as possible. The two compresses that can make delivery to the vessel [fol. 141] without the expense of drayage, have an advantage over our company, Sanders & Company. I think that is a business proposition that I could handle myself. If I want to build a warehouse to load these steamers, I am at perfect liberty to do so. I am not willing to bear this disadvantage until that time, but it is a situation that I do not see how we can get by. I would like to be relieved from it if possible. There are quite a number of cotton interests that cannot afford to develop water front facilities, but they have the privilege of using the water front facilities of the other compresses. (R. 435). They can use them to the same advantage, with the exception of dividends they get from their compress stock if there are any. We do practically all of our business at the Shippers' Compress Company at Clinton. Clinton is about 10 miles from the Courthouse, and about five miles from the Houston Compress Warehouse on the ship channel. It is about four miles from the Turning Basin Compress. Delivery to ships is made by barge, switching or trucks. (R. 437). Clinton

is farther down the channel than either the Houston Compress or the Turning Basin Compress. The barge line is owned by various members of the Houston Cotton Exchange principally. My firm has a small interest in it. I have had considerable experience in handling cotton, and in buying and selling cotton. (R. 437). As to whether or not 18¢ per bale as a margin is a factor of any importance, I will say that I don't know of a trade I ever missed for 18¢ per bale, and I would not miss a trade for that. 18¢ per bale is an important factor, but I don't think it limits any firm's business. I will always stand a raise of 18¢ per bale on general principles. At the present time, the cotton business is handled on a very small margin; it is difficult to figure a profit, you may get $5.00 a bale and you may lose $5.00 a bale. The barge price from Clinton is 14¢ per bale. (R. 438). The drayage price is 18¢ per bale, and the switching is shown on my exhibit. I have heard from our [fol. 142] agents in different countries of Europe, in reference to the prices at which Harriss, Irby & Vose, and Mr. Kempner, and Mr. Tiedemann were offering cotton in those markets. (R. 439). Sometimes they offer cotton in competition with us in the markets of Europe at a price 50 points, or $2.50 per bale less than the price we were offering cotton for. That is almost a daily occurrence with Kempner, and is a frequent occurrence with Harris, Irby & Vose, and especially in Spain, it is almost a constant condition as regards Tiedemann. We never extend any accommodations to the people in Europe. Our business is entirely on a cash basis. (R. 440). As regards payment, after arrival of steamers in Europe, business has always been profitable without an exception. We have been in the business about 17 years. I should say that the variation between prices offered by the various buyers for cotton in the interior, is about 50 points, or $2.50 per bale. I do not think that a difference of 18¢ per bale would be a factor in making the price on cotton. It would only be a factor in the profits accruing to the firm that has that advantage (R. 441). It would not enable that firm to buy more cotton or sell more cotton in my judgment, but they might make in the aggregate, over a season's experience, slightly more money than if they had not had those superior facilities. (R. 442).

WITNESS H. H. HAINES

I am Vice-President and General Manager of the Houston Chamber of Commerce, and have held that position since the first of March, 1921. From 1907 to 1917 I was with the Galveston Chamber of Commerce and its succeeding organization, the Galveston Commercial Association, handling traffic matters, and finally as General Manager of the Galveston Commercial Association. Prior to that I have been in commercial life in Texas and in the railroad service in Texas since coming to Texas in 1889. (R. 443.) [fol. 143] Leaving the army I returned to the Galveston Commercial Association and remained there from July 9th, 1919 until March 1st, 1921. At that time I came to Houston immediately. I am familiar in a general way with the conditions and the physical situation relating to the handling of cotton traffic and port traffic at Galveston. I have a similar familiarity in a general way with the Houston situation. Purposes of the Houston interset in the development of water facilities at Houston were twofold, one the development of a port, and the other the providing of an opportunity for the erection of industrial facilities along an extended line. At the other Texas ports, the available land was limited, and the fact that Houston was further inland provided suitable sites for industrial locations. Over 50 lineal miles of frontage can be made available for industrial sites in connection with the ship channel. If they put on the slip system, that would be reasonably extended. The Houston Chamber of Commerce is made up of the general commercial interests in the city of Houston. We have sought to encourage the development of industries and public facilities by encouraging the development of up-to-date industries in up-to-date localities and by putting in those industries all sorts of modern improvements that would lessen the handling costs of goods. (R. 445.) We have aslo encouraged the construction of industries that would best serve this locality which is tributary to the port of Houston. The municipal authorities and the navigation district have expended large sums in constructing facilities, slips and wharves. The expenditure on the ship channel by Federal, State and Municipal organizations is approximately $20,000,000.00, and the city has also organized and

constructed a belt line of railroads to furnish terminal service, running on the south side of the channel from the [fol. 144] turning basin south at the present time. (R. 446.) Provision has been made to extend the belt railway the full length of the channel on both sides. It has been the general purpose of the community and of our organ- [fol. 145] ization to afford outlet for all kinds of industries that may benefit by being located at tide water. We have sought to discourage the construction of facilities on the ship channel which could profitably and well be constructed away from it, thereby reserving the ship channel location as much as possible for those industries that require that sort of a location. There is an increasing volume of traffic generally that must find its outlet or inlet through the Texas Gulf Ports. The facilities at Galveston, which was then the only wharf, were formerly very inadequate. The loss that has been occasioned in the past as a result of congestion has taught us to build for the future. We desired to develop frontage at Galveston that could be used by private interests, but it would require engineering feats of great moment and a great deal of expense to do it. It would be prohibitive for ordinary traffic so long as other land is available at other locations at a lesser rail haul. The facilities which have been provided at Houston are more modern, and more substantial than the older facilities, and better than the majority of the facilities that exist at Galveston. As a result, the insurance rate on much of them is less. They are nearer by rail to a vast section of the (R. 449) territory served. There have been serious congestions at Galveston in the past. We have also at Houston one grain elevator of half a million bushel capacity and another of a million bushels capacity has been authorized, and the port is following out a systematic plan of modern up-to-date development. The congestions at Galveston have involved the detention of traffic in cars for a considerable period. I recall one year when more than $300,000.00 demurrage was assessed on detained cars at Galveston, and a large portion of that was cotton. I do not remember the year. (R. 450.) It was before the war. There have been times when they unloaded cotton on the right-of-way, on vacant lots. With the increasing volume of export busi-

[fol. 146] ness, it is of great importance to a shipper to be assured additional free time as an insurance against loss from congestion. Formerly a cotton merchant in Texas was never absolutely sure that he could make the deliveries that he had guaranteed to make, but with the increased facilities at Houston, Beaumont and Orange, steamship agents now will make guaranteed sailings on specific dates for specific ports, and our cotton shippers are able to sell to the man on the other side, and know that it will be delivered. (R. 451.) It is economical for facilities to be located near the water front, because if the railroads are able to make delivery almost within the reach of the ship tackle, it saves rehandling to the dock. Every additional handling of a railroad car detracts from the yearly value of that car to the shipper as well as to the railroad. Every conveyance that goes on the dock, whether a railroad car or a truck, of whatever capacity, serves to add to the congestion on the dock. Anything that has a tendency to lessen congestion during the peak period is of economic value. For that reason, if in effecting delivery at shipside by railway transportation, we save all the hauling of this cotton over the (R. 452) streets of Houston, all the maintenance and up-keep of tracks and roads, we are performing an economic service. Therefore, in these days of keener competition, it is going to be essential that the facilities constructed to handle the business of this section of the country particularly, shall be constructed where there is the least possible call for extra service to effect the delivery of these commodities to and from the ship. That applies to any port. There has been a very large amount of drayage by wagons of cotton at Galveston, and a lesser amount at [fol. 147] Houston up to the present time, although it is growing here. It would be prudent business foresight that concerns should seek locations where they can eliminate uneconomic service, provided the cost of those facilities would not be so great since the overhead would cause a greater handling cost. Compresses and warehouses away from the water front have been constructed of cheap ma- [fol. 148] terials. The more modern ones are built of concrete. When you build a compress on the water front, you are met with a very very extravagant construction cost. To

make that pay you must do sufficient business over that facility to justify the expenditure. You could not build a 30,000 bale warehouse there and make it pay. It must be larger so that the average cost per bale handled over those facilities shall be reduced, and you must be assured that you will have sufficient business to bring down the average cost per bale. The Shippers' Compress at Clinton is just a few feet from the water. It is a 30,000 bale compress, but it is not a water front compress. The stuff from that compress is loaded on a barge and by the barge transferred to a ship. (R. 454.) The wharf facilities of the Houston Compress Company at Long Beach are a necessary addition to the port facilities in the development of business because they materially conserve the necessary expenditures of efforts in handling the commerce of the port. The navigation district is now engaged in the construction of six or eight additional wharves at a cost of about $4,000,000.00 in order to take care of the increased movement that is coming to the port of Houston. There was not space for the ships that were coming here. (R. 455.) The old Moody Press, now the warehouse of the Cotton Concentration Company at Galveston, was the first shipside compress built in Texas. It is in exactly the same situation as the Anderson Clayton Long Beach Compress. It must have been built for a great many years. I have seen thousands of bales of cotton trucked out of that compress right over to pier 31 and pier 32 for ships. (R. 456.) At that time, we had one rate in Galveston, and that compress had the advantage over the press farther back in the city, just like Anderson Clayton & Company through the Houston compress here had the advantage of their wharf over any other compresses in the matter of handling cost. It cost something to truck there, because it could not all be placed within reach of the ship tackle, but that was the origin of [fol. 149] the shipside compress in Texas. In 1897 the Texas Railroad Commission ordered the same rate applied to points on the Galveston Wharf Company's tracks, as to points on the other tracks. When the two rate system went into effect, Moody & Company was operating that old press, and they got their cotton in for 51¢, the rates at that time being 51¢ and 54¢, and could truck it over to the North German L-oyd Pier, but it did not bother any of the rest

of the compressers in the City because it is a very small factor in the total business handled. The cotton crop in Texas this year is worth several hundred million dollars, which sum has to be provided by the banking facilities of Texas to handle the cotton crop, and it is nonsense to say that any one firm is going to have a material influence on that market. They cannot get the money to do it. There are six shipside density compresses in Galveston, one in Texas City and two in Houston. With one exception, the new one at the Houston Compress they have been operating for years, but nobody has felt the influence of them upon the market. All eight of them up to this time have not been material factors in the marketing of the cotton, and won't be. They can't get the money to be. During all that period of time, there has been a large movement of cotton through other channels. (R. 458.) I do not remember when the two rate plan was put into effect in Galveston, but the Moody Compress operated under both. Since Moody gave up that leased property, and built his new plant, the same situation has arisen on the Galveston Wharf' Company's property, with the new sheds of the Galveston Concentration Company.

WITNESS H. M. CROSSWELL

I am local Manager for Alexander Sprunt & Sons, Inc., home office Wilmington, N. C. My firm is engaged in buying and selling cotton in inter-state and export commerce. The branch of the firm here operates west of the river, principally Texas, Oklahoma, and some of (R. 460) Arkan- [fol. 150] sas. It is interested in the ship channel compress company in Houston, located north of the Magnolia warehouse and storage company on the ship channel, about ⅞ of a mile south of the Turning Basin. The Houston Compress Company's new plant is between our plant and the turning basin. We have had a compress there since about 1913. Our Compress is not a water front facility in the sense that we can truck cotton to the shipside. We are undertaking to install a wharf and wharf facilities opposite our warehouse. Our property is 1,000 feet long (R. 461) parallel-

ing the channel, with an average width of about 375 and a little less than 400 feet deep. We have developed one half of it away from the bayou, and have wanted since 1917 and 1918 to develop the other portion on the bayou, but found that we could not do it because the land would not support the building without expensive construction. In trying to justify the expenditure, we have tried to determine how much cotton we could handle over this dock, and we were not able to figure where it would pay. In enlarging our warehouse facilities, it is necessary for us to do bulk heading which would be a part of the service required in the construction of a dock, so that the expense of the construction of a dock would not be so much in addition. We are putting in a dock 560 feet long, which will possibly accommodate two vessels. The warehouse handles cotton for other merchants than our concern. We also do compressing for the public to the extent of our facilities. (R. 464). When the wharf is installed there, we will operate our entire facility for the public as well as for the particular firms that may be interested. We come in competition with interior concentrators in purchasing cotton, and we have found that competition affects us very acutely in buying and selling cotton. We ship to New England Mills and concentrate at Houston, and the interior concentrator, I would say, has the advantage (R. 465) especially when a [fol. 151] second concentration is involved. I understand that the interior concentrator may ship out direct from his local interior facility. We purchase cotton at interior compress points that are concentation points also. It is very seldom that we know whether it has been concentrated at that point or some other point, before we purchase it, and that question is not a determining factor in the price we fix. (R. 466). Generally speaking, our facilities have been larger than are required for our own business, and we have always had one or more outside accounts. Alexander Sprunt & Sons has been one of the important cotton merchants and exporting firms of America for a number of years. We come in contact with other merchants in purchasing cotton from the interior dealers, and we find that competitive prices vary on an average from a quarter to a half cent, which is from $1.25 per bale to $2.50 per bale. It is not always the same firm that offers the highest price.

Cross-examination (R. 468):

Our limits are affected sometimes by whether or not we have a demand for that particular grade of cotton, by the expenses of handling the cotton, and sometimes we are compelled to bid more than we want to. When we are in an advantageous position, our limit is much higher. On the proportion of cotton that we handle over the wharf, I think it is true that there is about an 18¢ difference in the expense to us of receiving and shipping cotton over that enjoyed today by the Houston Compress Company. (R. 469). When we finish our warehouse, we will be in a position to get our cotton from Texas common points on the 80¢ rate into our plant, and when we put it aboard ship, the only expense on a very indefinite percentage of it will be the expense of trucking. Our dock is 560 feet long, and 16 ft. wide. Back of the 16 ft. is the warehouse, and the depth of our property averages slightly under 400 ft. I understand that [fol. 152] when we truck the cotton by hand up to within 200 feet of the ship, that is as far as we have to pay for it. Trucking from 200 feet of the ship is at the expense of the ship. We have a two-story warehouse, and I do not know whether they will take the cotton upstairs or not; if so, that is an additional charge. (R. 470). We hope to obtain revenue by collecting wharfage from the people that use our facilities. We will save wharfage on our own facilities and save paying wharfage out to somebody else. If the others receive a dockage fee from the vessel, we expect to, also. (R. 471). We felt that it was necessary to put in the wharf in front of our warehouse plant, or change our location, because we had approached the waterfront as far as we safely could without putting in a bulkhead. (R. 472.) A very indefinite percentage of our cotton will be handled across that wharf. A substantial portion of it will perhaps be loaded at the municipal docks, or be shipped out via Galveston, or other compresses according to the position of the vessel. (R. 472) I cannot estimate how much we will be able to load at that wharf. I have hoped for 40% or 50%, but from my observation this season I think it will be much smaller. The shifting of vessels is practiced in Houston. We could not with this facility have one or two boats load cotton going to all the ports of the world and requiring many more boats than the facility would accom-

modate. (R. 473) The facilities complained of here, such as the Houston Compress facilities, were completed and put in operation about the first day of August. Since that time about half of the potential Texas crop has moved. I do not think there has been any unusual condition in the market, in the interior, this season. The condition has been about like it has in other years. (R. 474) We find one [fol. 153] exporter with a higher price in the interior today, and another tomorrow. (R. 474)

[fol. 154] WITNESS J. L. JONES

My firm is Godwin & Jones, Inc., Cotton Buyers. I have been in the cotton business something over 20 years. We buy and sell cotton at Houston. We do not own any water front compresses. I have had experience in buying cotton in the interior as well as at the port. I understand the cost of concentrating cotton in the interior is 25¢ per bale. That covers all the charges for the cotton going in and out of the ports. (R. 475.) To bring the cotton into the port and compress it to standard density, costs us about 70¢ per bale, so that the interior concentrator has a less expense of concentration than we have here. The interior concentrator generally concentrates at compress points, and the compress gets 90¢ per bale for compression. (R. 476.) The 70¢ at the ports covers the cost of bringing the cotton to Houston, such as interest, handling charges at the compress, and all except the loading of the cotton into cars; it does not include freight to Houston. The cost of compressing to high density is 75¢ per bale. Interest on the average of 10 days to get down here, about 35¢ per bale, and sampling about 5¢ per bale; that makes $1.15 total. Deducting the 75¢ per bale differential on the high density ocean rate, and the allowance of 1¢ per 100 lbs. for unloading at the compress, 80¢ total, a net cost of 35¢ remains, if I re-compress the cotton. If I do not re-compress the cotton, and handle it as standard density, I have about 25¢ handling charge added to the 35¢ making 60¢, and then I am about two points on getting the cotton down to a steamer, and that totals up to about 70¢ per bale. (R. 477.) It takes on

the average of 10 days to get the cotton into Houston. [fol. 155] The interior concentrator has the cost of 25¢ per bale at the compress, and whatever number of days he might have interest; he pays for it on the local bill of lading and concentrates it into the compress. If it moves to the ports, he pays that interest; if we buy the cotton, possibly we pay the interest. We pay the draft on presentation of the draft and bill of lading here. The interior concentrator, when he ships out, uses a through bill of lading. He gets his money on an export bill of lading (R. 478.) There is no interest on that. I do not know why so little cotton moves on that class of billing. (R. 479.) I understand that the 25¢ per bale at the interior plant covers the sampling. The charge of 25¢ per bale for handling standard density cotton, is made both at the interior concentration point and at the port. That charge includes sampling in the interior, but does not at the port. (R. 480.) Some compresses at the port make a flat charge of 30¢, and if you get all of the services at the port which you get in the interior for 25¢, it will always cost you about 40¢. That 40¢ would not include loading it out; there would be 25¢ for unloading, 5¢ for sampling, 10¢ for loading, and 5¢ for marking, making 45¢. (R. 482.) I think the difference between the waterside compress and the water front compress is fair and just, and I don't believe that it is going to work any hardship on anyone. I don't believe that 18¢ per bale is going to drive anybody out of business. I do not believe that the advantage of the waterside compress is as high as 18¢ but I cannot pass on that. Even if it were 18¢, I do not think that it would seriously impair the ability of the merchants located back of the waterfront to do business. (R. 483.) There is considerable difference in the cost of the plant and grounds back of the water front. I would natur- [fol. 156] ally rather be on the water front with any size business than back of the water front. The tremendous investment would be the only thing that would keep one from going to the water front. We do not use any of the water front facilities in our business; we use the Exporters' Compress Company, located about one mile and one-half this side of the turning basin on the Southern Pacific tracks. That compress makes a charge of 10¢ per bale for loading the cotton into the cars.

Cross-examination (R. 484):

The 25¢ charge for unloading the cotton out of the cars, includes 10 days storage; it does not include sampling, weighing, or classing. The charge of 25¢ made by the compresses in the interior and the charge made by the compress companies in the port, has nothing to do with the service of compression.

We use the railroad switching facilities to take our cotton from the Exporters Compress Company to the vessel (R. 485). We have no warehouse of our own.

WITNESS W. L. VAN LIEW

I am with Dorrance & Company, cotton buyers and exporters. I have had about seven or eight years in buying and concentrating cotton at Temple, where I was in business on my own account. I concentrated and assembled cotton into grades and lots for export or shipment to the Mills at the Temple Compress. I shipped nearly every bale I exported on through bills of lading via Galveston. (R. 486.) I would get my money on the cotton just as soon as I got my bill of ladings signed. That was a substantial [fol. 157] advantage. If I shipped the cotton to Galveston on a local bill of lading, and then exchanged that for an export bill of lading, I would have to wait sometimes as much as a week or ten days. The item of time in getting to a point where you realize on your cotton is very important to the cotton man, (R. 487) not only on account of the interest, but on account of the large amount of interest that will have to be advanced to a cotton merchant. If you keep your bank satisfied, you can do more business. I am familiar in a general way, with the concentration costs at the ports. I imagine that the concentration charge per bale at Houston would run about 60¢. The interior compress extends concentration privileges to the shipper as an inducement to him to have the cotton compressed there. There are times when they will provide the concentration free in order to get the compression. I had a tariff today from a compress at Garland, where they had removed their concentration charges for the balance of the season. (R. 488.) I think

that the rate for compression at the interior compresses is 18¢ per 100 lbs.

WITNESS J. GARRISON

I am Manager of the Cotton Concentration Company, Galveston, Texas. We have a combined charge of 55¢ which includes the receiving, the weighing, the sampling and the issuing of receipts, and the tagging, 30 days free storage, and delivery to the shipside. In a few instances we make delivery by truck to the shipside compresses, not to the ship. (R. 489.) When it has to go to other piers [fol. 158] than those adjacent to our facility, it has to be drayed, and in that case it would cost 18¢ per bale for drayage.

Cross-examination:

We dray all cotton to the ships. If the shipper should elect to pay his own drayage charge, we would reduce our flat charge for handling to 37¢. The Shipside Density Compress, to which we truck cotton, is not located within 200 feet of the ships; one of its plants is located on our premises. The Shipside Density Compress delivers to the ship, but in most instances, he would have to dray it. (R. 490.)

WITNESS J. V. SCOTT

I am Vive-President and Treasurer of the Houston Compress Company, and am in general, Supervisor in charge of the operation of the Company. I have occupied that position for about seven years. We have one plant about 2½ miles from here in the fifth ward (R. 491), located on the I. & G. N. and the H. E. & W. T. and the Houston Belt Railroads. The other is on the ship channel, and is known as the Long Reach plant. We have 15 or 20 customers that concentrate cotton with us whose offices are scattered all over the state, in Oklahoma and other states. We sample their cotton, weigh it, forward the samples to their offices, tag it, and block it away and hold for shipment. On their

orders, we load it out for them, mark it, compress it. This handling is called a concentration service, and we make a charge of 50¢ per bale for it. It includes substantially the [fol. 159] same service as that just described by Mr. Garrison for the Cotton Concentration Company. We allow fifteen days of free time; they allow 30 days and charge 55¢. (R. 492.) We make a charge for storage in excess of 15 days. We also compress. We perform similar services at the Long Reach plant. We also operate a warehouse and a dock at the Long Reach plant, where we handle cotton and lumber, flour, cottonseed meal, cottonseed cake, rice, and many other commodities. We also have inbound imported goods, such as paper, hardware, cotton ties and bagging. It is our effort to build up a general docking and storage business, and we have just a few months ago organized a department for that service. We send men out on the road to solicit not only general commodities but also cotton. (R. 493.) We also advertise and hold ourselves open for this general business, sending out circulars all over Texas, Oklahoma, Arkansas and other states. Our company is a bonded warehouse under the state and federal laws, and makes reports semi-annually to the Texas warehouse commission, and is inspected by representatives of that department. Primarily, however, we handle cotton. The Long Reach plant was opened in August, and is practically completed now. (R. 494.) For this season, I would judge that about 40% or 45% of our business is Anderson Clayton & Company's business. The rest is for various customers. We make the same charges and perform the same kind of services for Anderson Clayton as we do for other customers, and do not give them any preference, except when we get congested, we ask Anderson Clayton & Company to divert their cotton to their other plant. Last season they diverted something like 25,000 bales; part of it [fol. 160] went to the Magnolia Compress, and about 10,000 bales went to Menkwa Compress and other Compresses. We have done that for several seasons, but that is the only cotton we have diverted. We do that to take care of our customers; because Anderson Clayton & Company is interested in this plant, we feel free to call on them to divert their cotton.

We have three tracks at the Long Reach plant, two tracks that hold about a total of 80 cars, which is the cotton that is

concentrated for merchandising. Those tracks are about 300 or 350 feet from the edge of the wharf, and are behind the warehouse. The third track is on the wharf where we assemble steamship cotton; the warehouse is between our shipside track and our warehouse track. (R. 496.) We keep a separate record of cotton that is handled direct to shipside, and a separate department handles that cotton. We keep a separate record of cotton that goes into the compress and is compressed and moves immediately to shipside; and we keep another record of cotton that comes in and is warehoused. It would not be difficult for railway agents to check and determine which cotton is handled in each way.

The concentration charge of 50¢ per bale covers taking the cotton out of the cars, applying the tags, weighing, (R. 497). Sampling, storing in the warehouse, and in shipping out, marking and loading. If the cotton is to be given high density compression, that takes place after it has been stored away and samples have been sent to the shipper. The shipper sends back a shipping list and orders the cotton out by certain numbers. He may order 500 bales [fol. 161] shipped out of stock. We may have to handle 800 bales to get the 500, and if he orders it compressed we then truck it to the compress, compress it, and then load it in to the cars. Our compression charge is 75¢ per bale; we compress some when it comes in, to high density. (R. 498.) On the cotton that has been brought in and merchandised and then is compressed when it is shipped out, 75¢ for compression covers all of that service; and we hand truck it out to shipside at the 75¢ compressing charge. It is hard to say just what we get out of the compressing; we don't know just exactly what is costs us to truck the cotton. The 50¢ concentration charge, which I said included the loading out, has nothing whatever to do with compression. We may load some cotton without sending it to the compress. (R. 499.) If the handling out is included in the concentration, the 75¢ accrues solely for compression. I understand that that is the same as other compresses make here. Up to this season, our 50¢ charge did not include any delivery to the shipside; it did include the loading out and placing on the cars. We changed it this season so as to include the delivery to shipside, in order to meet com-

petition and hold our customers. They claimed that they could get their cotton delivered to shipside for that rate at Galveston. (R. 500.) We did not have any shipside facilities in which our company was interested before this season. We do that only on cotton which goes through both facilities. On cotton that is not warehoused by us and delivered straight to the ship at our wharf, we charge 75¢ per bale also. In that 75¢ we include delivery to the berth of the steamer, or within 200 feet of the ship tackle; that is a different class of business.

[fol. 162] The same charges apply at our up-town off of the water plant. (R. 501). The concentration charge of 50¢ there includes bringing the cotton from the off of the water plant to the ship. On cotton shipped in for merely high density compression, and not for concentration, the 55¢ charge would include the cost of bringing it from our up-town plant to the water. I do not know that we have had any of that business this season. Up to a month ago we were concentrating all of Anderson Clayton & Company's cotton at our back of the water front plant, and were also handling the Texas Farm Bureau account there. The latter began to accumulate, and we had to send Anderson Clayton & Company's cotton to the Long Reach plant because their cotton would probably move faster. The cotton is brought from the up-town plant to the ship by switch service in cars; the distance is about five or six miles (R. 502). We pay the switching or drayage out of our 50¢ charge. The switching is $8.10 per car, I think. The Houston Compress Company is practically owned by Anderson Clayton & Company. We hope to do a general storage business on other commodities during our slack season, and in that way keep our plant operating the year around. (R. 503). On the cotton moving direct to shipside, we do not get the document. Our information comes from the solicitors for the Steamship Lines; they 'phone us that they have a car of cotton, give us the marks and the car number, and tell us that it is for steamship so-and-so, and we order it on the steamship track and unload it. Our record will show the car number, the number of bales, and the marks that move in on that track. It will show who was the shipper and where it or-ginated. That cotton is brought [fol. 163] in on separate side of plant, on the wharf side, on

the track that is on wharf. (R. 504). We render no service on that cotton; the shippers merely wish to avail themselves of our wharf, and we do make a wharfage charge. Some [fol. 164] cotton comes to us already concentrated in the interior to be merely compressed and loaded direct to the ship; I do not know what rate is applied to that cotton by the carriers. (R. 505). Our records will show who are the shippers, the points of origin, the car numbers and the marks. The railroads can determine from our records what that cotton is. We also bill our charges from that same record, so that it could be determined at any time whether we collected a 50¢ charge for cotton concentration, or a 75¢ charge for compression, or the normal charge of 4¢ for unloading the cotton if it goes direct to shipside. The identity of the cotton can be preserved, and a bale can be traced from the interior points and kept track of until it goes to the vessel. (R. 506). It could be done except on this class that moves directly to the steamer; the record on that is by car, and the other would be by tag numbers. (R. 507). I would think that about 70% of the cotton handled by Anderson Clayton & Company at the Long Reach plant up to the present time, has been re-loaded into cars, and reshipped by rail; that would also apply to the other plants. At the beginning of this season, all of Anderson Clayton's cotton was sent to the fifth ward plant with the Farm Bureau cotton, and other customer's cotton was moving to the Long Reach plant. The part of Anderson Clayton's cotton arriving over the I. & G. N. railroad was going to the Long Reach plant (R. 508) and about a month ago it was necessary for us to ask Anderson Clayton & Company to send all of their cotton to the Long Reach plant in order to take care of the Farm Bureau. The Long Reach plant could not care for all of the Farm Bureau cotton, and besides we have a special classing room at the fifth ward plant provided for their own use. (R. 509). [fol. 165] The President of the Houston Compress Company, Mr. R. C. Fulbright, is not very active. With reference to Anderson Clayton & Company's business, the Houston Compress Company is a separate organization; Anderson Clayton & Company does not know anything at all about the handling of other customers cotton, they don't know who our other customers are, they don't know any-

thing about what they are concentrating or the nature of the business. The records are kept in my office.

We have a charge at the Long Reach plant of 50¢ for concentration. (R. 510). That does not include a charge for placing the cotton aboard the vessel, but does include a charge for delivering to the point at which the cargo is assembled for the steamer, namely, for delivering it within reach of the ship tackle. Our wharf is about 1,500 feet long, about 30 or 40 feet wide maybe. The compress is about 150 feet wide inside. The wharf is 40 feet wide, intervening space 50 feet, the warehouse 190 feet, 150 feet inside and 40 feet back. There is a transfer plant located at about 20 feet from the north side of the warehouse, and there is about 50 feet from the wharf to the warehouse. The Steamship Company comes up to the wharf on only one side of our plant. (R. 513). The compress is at the end of the warehouse. The wharf is 40 feet wide, there is an open space of 50 feet, the warehouse adjoins the open space, and the warehouse is about 150 feet from wall to wall. (R. 512). The compress is at the end of the warehouse. (R. 513).

All of our customers, including Anderson Clayton & Company are charged 50¢ for their concentration privilege, [fol. 166] and all of them are charged 75¢ for compression. The 75¢ also includes the cost of delivering cotton, cost of compression to the ship tackle, in case they take the compression service and no other; if they take the concentration service, the 50¢ for concentation includes the cost of delivery to the ship tackle. (R. 514). I cannot say what the cost of trucking is. (R. 515). The two tracks behind the warehouse are used for delivering cotton to the compress for merchandising or for compressing. The third track serves the wharf. We own all three. We collect wharfage from vessels whom we serve there. (R. 516.) The wharfage is assessed against the shipper, and the dockage is assessed against the vessel. We solicit inbound and outbound vessel's business. The inbound is discharged from the vessel onto our wharf; most of it is put in storage, and the rest loaded into cars on the railroad and carried off. I do not know whether our tariffs are filed with the Interstate Commerce Commission or with the Texas Commission. (R. 517). We charge 75¢ for compression. The

cost of delivery to the shipside or aboard the railroad car is included in the handling charge of 50¢. The compression is a separate proposition; it is simply and solely a compression charge and does not include those delivery charges. We do not unload any cotton from the box car into our warehouse for delivery to the steamship agent; we unload that on the wharf. The cars are ordered in when the steamer is ready to take it. If the steamer is not there it would be ordered in and put into space where the cargo is assembled for the steamer, in a portion of the warehouse which is separated from the other department in which we handle concentrated cotton. There is a separate department for that (R. 518). I do not know what it cost Anderson Clayton & Company to compress cotton. Very [fol. 167] little flat cotton is stored in either of our plants. Most of the cotton that comes in flat is compressed on arrival at either one of our plants. A small portion of the Farm Bureau's cotton comes to us flat, about 15% or 20%. The rest is compressed in the interior (R. 519). The storage rate at the Long Reach plant after the expiration of free time is about 8/10 of a cent a bale per day. The tariff states it as about 25¢ per bale per month, based on the average stock on hand each day, that averages about 8/10 of a cent a bale per day. The wharf at the Long Reach plant is an open wharf, and the plant it serves is located on the wharf. On cotton that is destined direct for shipside which moves in cars to a placement on the track on the wharf, our labor unloads it; and we make a charge for that unloading against the shipper (R. 520). On cotton received when the ship is not prepared to accept it, such cotton is unloaded and placed in the warehouse adjacent to the wharf, in a small portion of the warehouse that is set aside for that business. I think that that portion of the warehouse is about 40 feet all along the plant, 40 feet from the edge of the open space towards the center of the warehouse. Cotton placed in that designated place is unloaded on the wharf out of the cars, and trucked into the space and set in this space for the steamer. The same charge is made as would be made if the cotton was unloaded direct from cars on the wharf (R. 521). When that cotton moves out from storage, the stevedore accepts delivery from that point, and trucks it under his arrangement with the Steamship com-

pany to the side of the ship, if it is within 200 feet of the ship's tackle. There are times when the cotton will have to be moved to another space for the steamer to bring it within 200 feet of the ship's tackle, and our men do that. [fol. 168] When cotton is merchandised and then compressed to high density, we deliver to the ship at the berth where the steamer is docked. It may be docked at berth #4 which is 1,750, or may be 1,600 feet, from the compress (R. 522). We undertake to place it alongside the ship as close as physical conditions will permit, rather than at a point within trucking distance of the stevedore. We have to do that. I do not know whether or not we get a bill of lading then. The shippers do not get it through us. The ship makes application for the berth and my office furnishes that, and tells them where to go. I do not know why 70% of the Anderson Clayton cotton from the Long Reach wharf was moved by railroad. They gave us the order to (R. 523) load it in cars, and we performed that service for them. We still perform compress service at our old back of the water front plant. Delivery to shipside is included in our handling charge. We have not had any cotton for compression and delivery to shipside this year. I think we had some last year; we did not include delivery to shipside in the compression charge last year. Where the cotton is to be merely compressed in transit, the business is handled through the shipside plant (R. 524).

The fact that our warehouse is only about 40 feet wide makes it necessary for us to assemble a part of the cargo back of that wharf in our warehouse facility in order to assemble a sufficient amount for the ship, and that is a disparity in the construction of the warehouse. We could not say why the cost to us of compressing cotton should not be approximately the same as to the compress owner in Galveston. I do not know the conditions that exist at the other compresses (R. 525). There are some plants that could not compress cotton may be as cheap as others. The cost of demurrage and other things enter into the cost of compression at the end of the season. Our plant is a [fol. 169] modern and up-to-date plant just as Mr. Kempner's is (R. 526).

These customers of the Long Reach plant are possibly competitors of Anderson Clayton & Company. We hope to make a profit on every service rendered to competitors. If we do, I do not think that will give us a commercial advantage over the competitors, because we have imposed on Anderson Clayton & Company when we get congested. The cost of diverting their cotton cannot be estimated. Other customers don't have to do that (R. 527). The Anderson Clayton & Company pay the same for compression as any other company.

[fol. 170] WITNESS C. S. KINNEY

I am superintendent of the Houston Compress Company, and have been in the compress business about thirty years. I have been superintendent in charge of compress operation about twenty years, and am generally familiar with the handling of cotton in compresses and warehouses. (R. 529.) I have been superintendent of the Houston Compress Company about six years. In regard to the service involved in handling cotton from our warehouses at the Long Reach plant—the cotton is ordered delivered to a ship; usually we have space allocated for a ship in advance of its arrival and the cotton is delivered to that space if there is room in that location for it. If not, the cotton is moved to the nearest point possible to that space, and when room is provided in that space by delivering cotton out of there to some other ship, then this cotton is trucked into that particular space allocated to that ship. Often we have to handle the cotton twice to get it within 200 feet of the ship tackle. Our warehouse is 1750 feet long. (R. 530.) The sheds are 150 feet on the inside, and when the cotton is put into the warehouse we never know where it is ultimately going to be delivered, and we have to pick up with the shipping end of it where we leave off with the warehousing; we cannot connect the two together so far in advance, and it is often necessary to truck cotton 1750 feet to get it to the proper space allocated to it. We have a minimum haul of 50 or 100 feet if the cotton was in the compartment opposite the berth in which the ship was ultimately to be located. We have to put the cotton within 200 feet of the ship's tackle.

It is handled by hand truck; we have had very little chance to calculate the cost on our operations at the Long Reach plant because we have only been in business down there for about six weeks, but from the little information that we can gather, that cost runs from 6¢ to 15¢ a bale for the movement [fol. 171] according to the (R. 531) inconvenience and the distance that we have to move for each handling. That is just the labor cost; it does not take into consideration clerical hire or other overhead expense, nor the interest on the expense of investment; it is just the common labor.

Mr. J. V. Scott: The cost of this plant was approximately $1,500,000.

Witness: We have space set aside for a ship that will accommodate two or three thousand bales, and if we have six thousand bales going to that ship, we would have to put the overflow in some other compartment. Sometimes we have ships arriving close together which have been assigned to certain berths (R. 532) and ships will get tied up for some reason or another and the ship that is expected to come in last gets their first, in which event it is necessary to ship the cargoes by hand trucking. We have to stand that expense as warehousemen and wharfmen. We pay a minimum of 35 cents an hour for labor, and during the rush season we have to employ a good deal of over-time, for which we pay time and a half. We do not get efficiency out of nightwork that we do on day work, and we have to pay 5 cents an hour more for night work. The expense of delivery from the warehouse to the ship at Long Reach is considerably more than putting the cotton on the cars at the fifth ward plant. (R. 533.) Taking into consideration the switching, the cost of getting to the shipside from the fifth ward plant would be a little more than the cost of getting to shipside from the Long Reach plant, but very little more. The cost of putting it in the cars alone is very much less at the tenth ward plant than it is at Long Reach. We have had cases where the cost of delivering cotton at Long Reach amounted to more than the delivering of some cotton of the fifth ward plant to track No. 1 on the wharf front at the Long Reach plant. Those conditions vary. (R. 534.) At [fol. 172] the present time we are running both the fifth ward plant and the Long Reach plant night and day. Last

year we ran the tenth ward plant night and day almost the entire season, up until after Christmas. If we did not run both of those plants at the present time night and day and if we had not run the fifth ward plant last year night and day, the amount of demurrage we would have to pay would not be much short of $5,000.00; it may be more than that. At the present time we are discharging about 150 to 200 cars a day at each plant. If we did not run the plant all night, it would not take very long to run up the demurrage; shipping as we do and unloading about 200 cars a day, we have something like 900 cars in for us now. It will take about four days and a half to unload that. (R. 535.)

The I. & G. N. Railroad serves our Long Reach plant in shipping to shipside. If we had a large shipment we would try to load one hundred bales to the car; it would cost about 3 cents a bale maximum to load into that car, including the topping. Take the cotton out of the warehouse at the fifth ward plant and put it in *in* the car at 50 cents. The unloading of that car comes into the charge that we have down at Long Reach. The cotton in the fifth ward is warehoused and put back into a compartment right opposite a 22 foot platform and when we load cotton out of that compartment we load the car right directly in front of that compartment and do not have to truck it any distance. (R. 536.) Our maximum trucking distance at the fifth ward is about 100 feet. It costs about 6¢ to 15¢ a bale to truck cotton at our new plant. It costs so much less to truck cotton at the old plant than at the new plant, because we have a higher labor cost at the new plant; we cannot get [fol. 173] labor to come out to the new plant for the same money. They will go to the fifth ward plant because they live there, and the new plant is down the Bayou; they pay them 5 cents an hour more for one thing. (R. 537.)

Cross-examination:

The movement of vessels at our wharf is controlled through our shipping department and Mr. Scott's office. Mr. Scott has a man employed for that purpose, Mr. Stockton (R. 538). Mr. Stockton designates what berth the steamer is to take. The compress occupies about 40 or 50 feet at one end of the 1700 foot plant; the nearest ship

berth to the compress is about 250 feet — 200 feet to the nearest part of the ship, that is, to the ship's bow or stern. We would hardly deliver the cotton to a ship located at the nearest berth to the compress, because we warehouse all of our cotton. The cotton is received, tagged, weighed, sampled, classed, and separated by grade (R. 539) and run to the compress and compressed on arrival and re-stored back into this big warehouse awaiting shipping instructions. We know where the cotton that the ship is coming for is located in the warehouse. It is not within the power of the Company to designate the berth of the ship near to that cotton, because the shed is 1700 feet long and there is cotton of every grade and every description in that shed from one end to the other. There is some of every kind of cotton in every compartment; when berths one, two and three are occupied for shipment, you place this ship in berth 4 and your cotton may be in berth one. The shifting of ships from one berth to another is only done in the *in the* [fol. 174] case of a mix-up when the ships get off of their schedules and the ships has to be docked at another place to take care of her while the other ship is occupying her berth (R. 540). The average lngth of those ships is about 400 feet. That would mean 400 feet off of your 1700 feet of trucking, if you had the run; if you did not have the run you would have to truck it to the extreme other end of the ship. My statement that 6 cents is the minimum cost for trucking is based on the actual cost as shown by the several different foremen's reports; of course that takes in over time. When a ship is coming in to take on cotton, all the cotton to go on that ship will not be in one compartment of the warehouse. (R. 541) It may be scattered from one end to the other. Some of these compartments are upstairs, and the cotton will have to be brought downstairs. The ship *has* never shifted from one place to the other because the cargo was scattered. They shift when one is occupying a berth that the other should be occupying. (R. 542).

HEARING AT DALLAS, TEXAS, OCTOBER 25th and 26th, 1923

WITNESS BENJAMIN CLAYTON

I am a member of the firm of Anderson, Clayton & Company, of Houston, Texas, cotton merchants and exporters,

and I have been engaged in the cotton business for about 20 years, having been located in the Southwest all during that time. I have bought and sold cotton all over the South. (R. 546). The headquarters of our firm was originally at [fol. 175] Oklahoma City and at present are at Houston. In buying and selling cotton, my firm competes with all other firms located in the same territory in the Southwest. There are two characters of business. One is domestic business, cotton which is merchandised and sold to domestic mills, and the other is export business, buying and selling cotton to foreign mills or foreign countries. As cotton is bought from first hand in the interior it is bought in various grade and staple, and does not come in uniform lots of the same grade and staple (*T.* 547). One farmer may pick a part of his crop before rains have occurred, and it will be high grade; another part after rains have occurred, or after frost and it will be a lower grade. In order to merchandise that cotton, it is necessary to assemble lots in merchandising quantities. The unit of trade between merchant and consumer is 100 bales, 50,000 pounds approximately; one mill as a rule does not consume cotton of more than one or two qualities. One mill making one character of goods will consume one character of cotton and another mill another, so that those grades must be assembled in a central place into even running lots. For that reason it is necessary either in the interior or at the port to bring your purchases together from various directions so that these even running lots might be assembled. The three methods of shipping, the through export bill of lading from interior points, the bill of lading to the port for export, and concentration and merchandising at the port to be later sold in foreign commerce are followed generally speaking in my [fol. 176] own business, and I believe that at least 70 per cent of the sales we make are with the option of shipping on through bill-of-lading, port bill-of-lading, or custody bill-of-lading. The custody bill-of-lading is the bill-of-lading given by the agent of the steamer at a time which is guaranteed to be not more than fifteen days prior to the arrival of the steamer in port. A port bill-of-lading is one given by the agent of the steamer at a time when the steamer is guaranteed to be in port or within 50 miles, I believe, of port, and a through bill-of-lading explains itself. It is one

issued by the Railway Company jointly for the Railway Company and the Steamship Line. The custody and the port bill-of-lading are obtained only at the port. A through bill-of-lading (R. 549) is one issued by the rail carrier. I believe that England is the most important consuming market for the cotton merchants of this territory. It is my understanding that the English merchants customarily gives to the producers the option of using through bills-of-lading or port bills-of-lading, and that is true of the majority of our business. That is true of Italy and I think of France. Our traffic manager states that we have the option on about 75% of our business (R. 550). Therefore we have the option of shipping on the through bill-of-lading on about 75 percent of our business, but we do not actually use that option except when we ship through from Houston to Galveston. The custody bill-of-lading enables you to secure your bill-of-lading 15 days before the steamer arrives, which is an advantage in the matter of interest. The port [fol. 177] bill-of-lading is of similar advantage but not so great. Japan is an important consuming market for the cotton of the Southwest (R. 551). We usually have the option of using a through bill-of-lading on business to Japan. I have personal supervision over our sales, and am familiar with how they are made. The effect of using a through bill-of-lading is found principally in the facilities afforded the shipper for through carriage from point of origin in the interior to foreign destinations, and in the matter of interest which he pays by reason of securing his document at an earlier date. The concentration service rendered in the interior is practically the same as that rendered at the port in its effect (R. 552). It is done for the same purpose. Cotton is extensively concentrated at the warehouses of the local standard compressors, or high density compressors located in the interior throughout Texas and the Southwest. Except at one or two points where they have large warehouses, that is practically all of the interior concentration. The service charged by the warehouse at most interior points for the concentration privilege is 25 cents per bale. It costs the cotton merchant 50 to 65 cents per bale to have that service performed at the port. On a substantial part of the cotton that comes in competition between the port merchant, exporter and the interior merchant exporter, the

charge paid by the port merchant exporter of 50 to 65 cents per bale for concentration at the port is additional to the charge paid by the interior merchant exporter for the service of concentrating at interior points (R. 553). Based on our own purchases, about 48 per cent of the cotton which [fol. 178] comes in competition between the port merchant and the interior merchant already bears and represents the cost of interior concentration. I mean that there is virtually a second concentration; the same is true of cotton which originates at the compress point and which passes through the compress there without the slightest concentration as it is generally understood, not involving any service on the part of the rail lines previous to its assembly on the compress platform at the interior concentrating point (R. 554). That means that that cotton at the port would have already had the interior concentrating expense. The 25 cents per bale is charged by the compressors in the interior for service given to the merchant, and none of it accrues to the rail line. The charge is for the opportunity to merchandise his cotton on the platform of the compress. The merchant shipping directly from interior concentrating points through the port of Houston or Galveston is able to deliver his cotton at destination in Europe for at least 10 cents per 100 pounds less aggregate costs, with the subtraction of 3½¢ arbitrary which it costs him because he has the shipside rates (R. 556). After he pays the 3½¢ difference in the rate which he pays for the advantage and the value of the through or local export bill of lading, he is still ahead over the port concentrator 6½¢ a hundred. The 10¢ additional expense that the port concentrator has consists of unloading, weighing, sampling, storing away, and final delivery within ship tackle, or loading in to cars. I am speaking particularly of cotton that has been concentrated in the interior and then [fol. 179] is purchased at the concentrating point by the port merchant who concentrates at the port (R. 556). The port merchants are competing in the buying market at these various concentration points in the interior and are bidding against merchants who are located in the interior and who may ship direct from those facilities. The port merchant would have the privilege of shipping direct from those facilities, and the interior merchant has the privilege of rehandling at the port if he so desires. Forty-eight percent

of our purchases last year in the interior were concentrated and had already paid the 25 cent charge (R. 557). Of that 48%, perhaps half of it originated at that compress point and perhaps half of it originated at outlying points and was concentrated there. When I speak of a concentration charge, I speak of a charge not for bringing the cotton from an outlying point into the compress, or not by reason of its having moved in that way, but the charge which is assessed by the compress company against the owner of the cotton by reason of its having been put on his facilities. The 25 cents is paid whether the cotton originates in the town itself where the compress is located or whether it originates at a non-compress point and is moved into that compress point, so that the total of 48 percent had previously paid 25 cents per bale for compress privileges, warehouse privileges, and etc. All cotton before it moves to final destination must be merchandised somewhere along the line at some established concentration point (R. 559). The charge of 25¢ per bale [fol. 180] paid in that case is the same cost that the man has to pay who concentrates his cotton at a concentration point; it is the only charge made against the owner of the cotton for the privilege of using the compress platform and warehouses as a merchandising place. Whether he merchandises his cotton on the compress platform or concentrates it at some concentration point and unloads it and keeps it there until he can get up more cotton, the cost is the same, unless he ships it to the port.

I mean by a "port merchant" a merchant who concentrates substantially all of his cotton at the port, and I mean by an "interior merchant" (R. 560) one who concentrates and merchandises substantially all of his cotton in the interior. I make no distinction between the merchant who might have his own facilities and the cotton factor who has no facility; a great many interior merchants concentrate at the port. Some of them use their own facilities and others use the facilities provided for the public use. At these interior concentration points we find the competition of merchants from everywhere.

We do our buying business, and I think other merchants operate in substantially the same way, over the telephone and by telegraph from interior f. o. b. merchants, men who operate in a circumscribed territory. They gather cotton

at the compress points from a small territory nearby and sell it to merchants such as ourselves. (R. 561). On so doing we come in competition with practically every merchant such as ourselves in the business. Upon given days we find merchants from Dallas, Galveston or Ft. Worth at [fol. 181] the same places with prices substantially higher than ours. Sometimes our prices are higher. They vary as much as $2.00 to $2.50 a bale. When a man buys a bale of cotton, he must place $150 of his capital in that commodity at this point of origin, and that capital remains invested in a great many instances (R. 562) until the bale is actually delivered in the mill of the consumer in Europe. It takes an enormous amount of resources to handle a business of that sort in volume. Those resources are nearly always borrowed. In a commodity representing a value of $150.00 a bale, or $15,000 for each unit of trade, it does not seem reasonable that an advantage of 18¢ a bale, which it has been charged here that we have, but which we deny, would turn things upside down. (R. 563). There are so many factors that enter into competition in this country and in Europe that are so much larger than 18¢ a bale that it seems too small to be considered as an important factor in the whole business. There is real competition in the cotton business. The reason for that is that the cotton merchant has no plant; a man may move from North Carolina to Texas tomorrow and become on the next day the strongest competitor in the market; he can take out his bill-of-lading to the point at which he sells his cotton, or wants to concentrate it, and obtain accommodation from the bank easily. Cotton is a liquid commodity. He uses the facilities of the public. (R. 564).

I cannot give you the average legitimate profit of a successful exporter in handling cotton. I would give you the [fol. 182] variation; I think it is the variation that counts. I do not know what the experience of other merchants is as to the amount of profit they make per bale. I am not in a position to state what the average profit is. (R. 565). I would accept the statements of other merchants, but there are so many factors that enter into it, the factor of the ability of that particular man, his financial resources, his application to his business, his reputation in the business, his outlet in Europe, the character and ability of his agents

in Europe. I take serious issue with Mr. Kempner and Mr. Reed when they state that 3½¢ a hundred pounds is a determining factor in whether one man stays in business or another one. (R. 566). I dont know of any cotton firm that ever went broke buying and selling spot cotton.

There are interior merchants who utilize interior concentration, port bills-of-lading, custody bills-of-lading, and port concentration. There are port merchants who to some extent utilize all of those methods also. After a merchant concentrates his cotton at the interior press and pays his charge at the press of 25 cents a bale, if he ships that cotton on a through bill-of-lading to the port for export, he has no further expense except the exchange on documents for which he pays perhaps a cent a bale to his freight broker. The man who uses at present the local export bill-of-lading receives a service of substantial value and one which must cost the carrier something to perform. By the use of the export rates, the merchant in the interior is enabled to [fol. 183] put his cotton aboard cars, ship it through to the steamer direct, obtain his port bill-of-lading or ocean bill-of-lading, without the necessity of taking possession of his cotton in any way; and without the responsibility and expense of finding the necessary resting place, transfer place, switching, and without any liability for demurrage. Demurrage is one of the most important elements in the difference between the through bill-of-lading and the local domestic bill-of-lading. It might be urged that the man who uses the through bill-of-lading or the local export bill-of-lading does not in fact use any more car detention than the man who uses the (R. 568) local domestic bill-of-lading, but I think that the facts that upon a local export bill-of-lading the shipper is practically guaranteed from the accruing of storage is the important fact, and whether he actually benefits on each car on that or not is unimportant. He pays for insurance. If his particular car should suffer a detention at the port, he has no demurrage to pay under the local export bill of lading for twelve days, and upon subsequent detention he pays at the rate of $1.00 per day per car, whereas on a local bill-of-lading only two days free time is allowed, and $2.00 per day assessed upon the first four days of detention, $5.00 per car on each subsequent day. If the shipper using the local domestic bill-of-lading should

use upon a single car the same detention of 12 days which is permitted on a local export bill-of-lading, he would pay $48.00 demurrage, while the man shipping on a local export bill-of-lading pays none at all. (Record 569). The demurrage charges on local bills of lading make it necessary [fol. 184] for the man who uses that bill to provide storage facilities, by renting, leasing, or building them, to take care of that cotton, whereas the man using the thru bill does not have to do that. The business we do in Houston and which other- do who use our facilities is purely a merchant business. The facilities of the Houston Compress Company were not built as transit facilities and could not be maintained on that basis; they were built for merchandising facilities. The cotton which reaches us is of various qualities, which we don't know until it is unloaded in our premises. We sample and weigh and classify and assemble it into even running lots, hold it there until it may be sold, or until the time of shipment arrives. We have for a number of years concentrated a large quantity of cotton in warehouses which we own in the North side of Houston about five miles from the ship (R. 570) channel. When Houston began to assume some importance as a port, we began shipping cotton from our Northside plant to the Municipal Wharves on the Houston ship channel in an effort to clear our shipments for export thru the Port of Houston instead of through the Port of Galveston. We found the facilities inadequate to the volume of business that was offered at Houston. It took a good deal of effort as a rule to secure the placing of our cars after they were loaded at the Northside plant. Steamers for all ports were not enabled to call at the Port of Houston because the facilities were inadequate, and those which called found congested docks and were not able to handle the cotton as expeditiously as they could have if more wharf facilities were provided. We first planned to build a wharf there with a [fol. 185] smaller warehouse than the one we finally built. We decided to make an effort to utilize our facilities and our organization, which was a very large one, in the warehouse business for the whole year instead of the seasonal portions of the cotton business. We realized that the facilities which we had at the North side and the ones which we thought (R. 571) of building in the ship channel represented

an enormous investment which was used for only a small part of the year in the cotton trade. We realized that we had a substantial and expensive organization which was busy for only half the year. We finally adopted the plan of building such a place that we might attract a large storage business in general commodities during the summer months when the cotton trade was at its low ebb, but we might attract an inbound cargo business, and employ our handling facilities and wharf and storage facilities for the general public. We employ our organization constantly instead of seasonally. That was our particular object in building the long reach plant.

When the interior merchant ships on a through bill-of-lading to the mill, his expense and responsibility are ended. The merchant who concentrates at Houston or Galveston has to pay additional charges at both places. The Ameri- [fol. 186] can Mills trade represents practically half of the consumption of American Cotton in the world, more than half this year. Port concentration is only practicable when you recompress the cotton at the port, that is because when it arrives at the port it is sampled on both sides leaving very large openings in the covering of the cotton and the cotton must be recompressed in order to cover up those openings and make a neat package. The merchants concentrating in the interior and shipping directly from the compress point to an American Mill is enabled, in competition with the port merchant to concentrate at the port, to deliver his cotton at an American mill 50¢ per bale, representing the cost of rehandling at the port, and 75¢ per bale representing the recompression of the cotton, more cheaply than the man (R. 573) who concentrates at the port. We have practically withdrawn from the domestic mill business. We do not attempt to do any very large domestic mill business. Occasionally we make sales to these domestic mills from Houston, but we are practically out of competition at Houston, and so are all other merchants in Houston. The cotton can be recompressed to standard density for 60¢. The cotton that goes to the New England Mills is not usually high density cotton. In order to ship a package of neat appearance that will be merchantable, I think they would have to recompress the cotton even to standard density as a practical (R. 574) matter, though

nearly all of the cotton that comes to Houston is high desited when it arrives. We don't figure on using it in the New England Mill business. There is no difference in the rates on coastwise steamers on standard density and high density. The recompressing is not only to cover up the sampling places, it is also to get the patches on it which bring the tare up to the maximum allowed by the mills, and that is an important part of our business, especially [fol. 187] at 30¢ per pound. I do not think that the only purpose of compressing cotton in transit is for saving transportation facilities (R. 575). If cotton is concentrated in the interior, it is not compressed wholly for the saving in equipment. It is compressed also as a facility to the concentrator, and to the merchant. Upon the cotton coming into the interior compresses and the concentration points, if it is being handled by the interior merchant selling to the New England mills, it is sampled on both sides of the bale and then is arranged in order and later shipped out at standard density to the New England mills. When he compresses it he can have his patching put on to get his tare, cover up the holes in the bale and get it into proper shape. If we buy cotton in the interior, we cannot have the patches put on and the places covered up at the interior point, because the patches would be cut to pieces again when (R. 576) it arrived at Houston in the process of sampling. The service that is performed at the interior, and the compression, is paid for by the railroad. Of course if the rate is less than 74¢, the shipper has to pay part of it, and if it is less than 56¢, he has to pay all of it. The New England mills prefer standard density cotton to high density cotton. We have attempted to ship high density cotton to only one or two domestic mills, and in at least one instance, they attempted to reject the cotton entirely. They put it back in our hands because it was high density. I do not know whether the mill finally took the cotton or whether we took it back (R. 577) I know they did notify us of a rejection because of its being high density. The foreign spinning mills receive the high density cotton as readily as they do the standard density since the war only. That is all they got during the war and they [fol. 188] became accustomed to it. The charge for stand-

ard compression is 60¢ and for high density compression is 75¢. I do not know what it is in the interior (R. 578).

Up to date the investment that has been made in the shipside plant, wharf, warehouse, and compress at Long Reach by the Houston Compress Company is $1,600,000.00. I think $600,000.00 or $650,000.00 is chargeable to the wharf and the ship. (R. 579). A good deal to my surprise, it de- [fol. 189] veloped when this investigation was started that the shippers through Galveston had been able, during last year, by reason of the rates and practices of the Galveston Compressers, to deliver their cotton at shipside at least 3½¢ or 3¢ less than the export rate, 3½¢ or to the extent of the switching charges less than the concentrator at Houston. That practice is still in effect, and I know that it has been indulged in extensively for a year or two prior to this by shipping through the shipside density compress, and last year I learned that it was indulged in as regards the business of the Cotton Concentration Company at Galveston. Their- was nothing secret about the arrangement at Galveston. It was covered by circulars sent out by Mr. Zimmer in August, 1922. The practice was called to our attention by the Weatherford Crump case, docket 13,991, (R. 580). That can be done by merchants located in the interior as well as by merchants located at the port, and I think it has been done principally by the merchants located in the interior. I do not know whether that has affected the amount of cotton shipped on export bills of lading that would pay the 83½¢ rate. I believe there has been a tendency to ship high density cotton irrespective of whether any actual profit was made, if they just came out even. I believe the practice has been followed because of the neatness of the package, and the freedom from pilferage that it affords. The standard density package is large and loose and is easily pilfered and subject to waste. I believe the shippers have preferred the high density package on shipments to Europe on account of these factors, in addition to the fact that they could get their cotton to shipside for 80¢ instead of 83½¢ by using the facilities of the Shipside High Density Press, and this preference has affected the use of a through bill of lading. The high density package is a more desirable package to the ocean

[fol. 190] carrier to the extent of the difference in stowage, and the east with which the more compact package may be stowed (R. 582). The danger which arose last spring of the high density differential being abolished arose from the circumstances of a great deal of cotton moving by New York to export by coastwise lines from Galveston to New York. The New York lines at that time did not attempt to make a difference between high density and standard cotton, because business was slack with them, and it diverted a good deal of business from the direct lanes of the Gulf through the New York gateway. The gulf lines did consider abolishing the differential, but that situation corrected itself (R. 583). All the shippers I know of who were interested in the big facilities at the port did protest vigorously with the direct lines and urged them not to abolish the differential because it was a thing of value, economy and progress, and we didn't want to see the prog--ess of the cotton business arrested by going back to the standard bale for export, and especially we did not want our facilities, I will admit, practically rendered useless.

If one rate be put in to everyone, including the rate to shipside and to all presses, it would remove the credit of the 3½¢ that we apply against the 10¢ per 100 lbs., the cost of handling cotton at the port. It would abolish that and leave the port concentrator at that much disadvantage as compared to the interior. Port concentrators, both adjacent to and back from the water front, would be worse off than the interior concentrators, and that applies in detail to that proportion of the cotton which originates in the interior and compress points, or which has been concentrated at (R. 584) a compress point before it comes into competition between the merchant who concentrates it at the port, and the merchant who concentrates it in the interior. On the remainder, that which is bought at the [fol. 191] compress point and shipped through to be compressed in transit to the port, and shipped to concentrating points by the final merchant, to the interior merchant, the difference is the difference between 25¢ per bale which he must pay for merchandising his cotton at the interior concentrating and 50¢ per bale which the port merchant must pay for concentrating his cotton at this port. At the present time, with the present arbitrary in effect, that difference is

diminished, the advantage to the interior concentrator on that portion of the cotton is diminished to the extent of the arbitrary of 3½¢. If the shipper using the Houston Compress Company's facilities at Long Reach should be charged 81½¢ (R. 585), and the shippers using the facilities back of the water front in Houston and back of the water front at Galveston, should be charged but 80¢, the effect of that would be to deprive the merchant using the facilities of the Houston Compress Company at Long Reach, or any other water side warehouse of the rates which he is justly entitled to, for the movement of transportation of a commodity which is essentially and entirely in domestic commerce, the whole nature of it being domestic. I make a complete distinction between cotton which arrives for merchandising purposes to go through all the processes incident to the business of merchandising cotton, which may originate at one point, and finally go to 10 or 15 points, or cotton which may originate in 15 points and finally go to 1 point from the concentrating point, I make a distinction between that which goes through the merchandising process in the warehouse at the port and that which reaches the port in a state of final preparation for export, intended and designated for export (R. 586). That distinction exists in the trade as well as with respect to its transportation character.

[fol. 192] I am not prepared to say what the actual cost of putting cotton to shipside after it reaches the warehouse of the Houston Compress Company at Long Reach, but the charges made at other places where a similar physical [fol. 193] situation exists for service which seems to me practically the same, such as the plant of the Memphis Terminal Company, should be referred to. Two corporations operate the Memphis Terminal Company; it has a large warehouse organization and a compress. One conducts a warehouse and storage business, and the other conducts, on the same premises, a compressing business (R. 587). The factors and the merchants there rent parts of this warehouse and operate it themselves, and handle their own cotton in it. I saw the tariff the other day, showing a charge for delivering cotton from the compartments of the warehouse to the location of the compress machines in another part of the same premises of 15¢ per bale. I am

told by Mr. Kinney, who is well acquainted with that plant, that he considered that service about like the service we performed in the same sort of way in delivering at shipside at Long Reach. The Savannah Warehouse and Compress Company of Savannah, Ga., which is located on the Savannah river, has a plant that is not quite as large as our Long Reach plant, I believe, and the average movement of cotton from the compartments of the warehouse to the river is about the same as our movement would be to ship tackle, and there I believe their charge is 15¢ per bale for delivering the cotton from compartment to riverside (R. 588). It is used by numerous merchants. I am not prepared to say whether that is a reasonable charge or an unreasonable charge, but I know it is collected in competition with other facilities, and I conclude that it is reasonable, otherwise competition would force them to reduce it. The cost of handling at our Long Reach plant may be included in our charge for concentration and merchandising. If the cotton is merely high densitied and no other service is performed, we deliver, as I understand it, to shipside at the 75¢ charge. The charge of 50¢ made by the Houston Compress Company last year, was made on account of a similar service being performed and a similar charge at Galveston by the [fol. 194] Cotton Concentration Company. Our charge for merchandising is 50¢ per bale (R. 589). Anyone can concentrate in our warehouse at the charge of 50¢ per bale. If they have their cotton compressed to high density, the total charge is $1.25. In merchandising cotton from f. o. b. dealers in the interior or concentrators, we use principally the weight at Houston. In some cases the weight at the presses in the interior is used. The final weight on which we get paid for it when we re-sell it, is the weight at destination. In actual practice, they sometimes gain in weight between Houston and delivery in Europe from one pound to three pounds, may be five pounds per bale and they lose in some cases from one pound to five pounds per bale; one pound less would be about 30¢ less (R. 590). In some seasons the average gain exceeds the losses; in others I believe the losses would be greater than the gains. This year has been a wet year, and I think perhaps it might not be a particularly good year on weights in Europe. Cotton absorbs moisture very readily and it is hard to detect. There can

be ten pounds of moisture in a bale of cotton, and it will still be difficult to detect by observation.

I do not know whether the cotton would be piled up high in tiers in the warehouse at Memphis or not. It would make some difference in the cost if it were. We tier a good deal of cotton at Long Reach, both round and otherwise.

Cross-examination:

Round bale cotton is high densitied at the Gin; it is loaded on board ship just like it leaves the gin; we sort it, grade it, weight it, sample it. When a merchant in Galveston buys that class of cotton in the interior, and brings it to his warehouse, it would not cost him anything additional at the Cotton Concentration Company to get that cotton delivered to shipside. The Cotton Concentration Company grades all [fol. 195] their cotton but they do not assess that grade against the merchant who ships the cotton there (R. 592). If I buy that class of cotton in the interior, I would concentrate it at Long Reach, pay the Long Reach plant 50¢ per normal bale, that is for two round bales, and they would do the merchandising service and deliver it to ship tackle for me. Mr. Harriss could handle the cotton through the cotton concentration company and they would handle it for him at the same rate. If he wanted to assume a greater charge, and handle it at his own warehouse, rather than handle it through the cotton concentration company, I imagine he would have some advantage which would make it to his interest to do so. If he handled that cotton into his warehouse, he would pay 80¢ from Texas Common Points or 62¢. He would also pay 62¢ to our shipside Long Reach plant (R. 493). If he handled it at his own plant at Galveston, it would cost him drayage to get it to shipside, which is stated to be 18¢ per bale. At Long Reach plant we do truck within reach of ship tackle, but not when it first reaches its first resting place in the warehouse. We do trucking from the tier in which we have placed the cotton in even running lots to steamer, and that is additional to any trucking that would be done by Mr. Harriss. When he unloads the cotton he would probably have to truck it a few feet from that place where he has it blocked off to the dray (R. 594). The distance would depend on where his dray goes; he has rather a small plant at Galveston, I think.

He would perhaps have to truck it 50 feet. There is no press I know of in the state of Texas or elsewhere that deals in cotton. The press operation should not be confused with the shippers' operation. The service of trucking is performed by the warehouse company. We are stockholders in our warehouse; we own all the stock, except qualifying [fol. 196] shares (R. 595). We charge wharfage against cotton moving over our docks at Long Reach; we also charge dockage, or shed hire, against vessels using them. Those two charges were naturally taken into consideration when we decided to build the plant at Long Reach. We also took into consideration the fact that we may be able to obtain the benefit of domestic rates on cotton billed to Long Reach plant. We do not take the position in this investigation that the actual cost to the Compress Company of trucking cotton from the various compartments in the warehouse to the shipside is as great as the difference of 3½¢ per 100 lbs. in the rate itself. There is undoubtedly some economy, how substantial it is I do not know; I cannot estimate it. There is some economy in the handling of cotton from the warehouse itself to a point on the wharf front that the steamer will take it as compared to loading cotton in a car and switching it down to a wharf; but that economy is not 18¢, because the cotton has to be moved a great distance sometimes, and sometimes a short distance, but all of it has to be moved (R. 596). The ship takes possession of it in the portion of the warehouse set aside and constructed for the purpose of taking care of ships for cotton.

At times our prices are lower than our competitors prices, and at times their prices are lower. I think that the Houston Compress Company can compress cotton to high density as cheaply as any other compress in the business. I think it is good for the cotton producer to have as much competition among the cotton buyers and exporters as possible. I think it is particularly to the producers interest (R. 597) to have the most modern facilities that can be provided for his use at logical points. I think it is decidedly in his interest that every element of cost that can properly be saved in the merchandising of his commodity be eliminated between the producer and the final consumer. I do not know that the number of buyers that bid for his [fol. 197] commodity make such a great difference. I sup-

pose there are several hundred now, and I dare say that the number bidding for his commodity and the strength with which they bid for his commodity is no less today than it was a year ago today. We object to an adjustment which places our business at Houston on a greater inequality with the interior merchant than it is now. (R. 598). Under the same circumstances as ours, we have no objection to the application of the same rates to any one who cares to use them, and I think we have shown that by opening our Long Reach plant to the use of every merchant in Texas who wants to use it. We have solicited practically all to ship their cotton to our facilities. We had no aim when we built the plant to isolate it there and use it for the purposes of Anderson Clayton & Company and hold out others who might want to use those facilities for merchandising. It would be entirely illogical for me to object to the Galveston concentrators being able to obtain their cotton delivered to shipside on the 80¢ rate, if that is what I pay. I would think that it was utterly illogical to deprive me of the benefit of my location by an adjustment of rates that was unfair and illogical performing for one man a greater service than you perform for the other, or charging me more for the same service than is charged my competitor in the same locality. (R. 599). I doubt that the purpose of the carriers making their freight rates was to equalize all exporters. I think that the railroads were performing the service on the export traffic at an expense, and that that service was of value to the shipper and a facility to him in the conduct of his business, and they charged for it. Railroads don't charge for every little service they perform in the handling of cotton. They charge, as I understand it, every shipper the same rate for the same service. That rate includes services which are at the disposal of the shipper. If he chooses not to use them, it [fol. 198] is no affair, as I understand it, of the carrier. I don't think the adjustment was made to encourage and promote competition among cotton shippers and buyers. I think the Interstate Commerce Commission has acted on the principle that they were performing a service in export for a shipper which was a greater and more expensive service, and of more value to the shipper than the service they performed for the domestic dealer who shipped

his cotton to his own facilities (R. 600). There is no advantage (R. 601) to the cotton shipper concentrating his cotton in warehouses at Long Reach as far as rail transportation is concerned, as compared to the cotton concentration company at Galveston, who assemble about 400,000 bales a year. There is no advantage as compared to the fifth ward plant of the Houston Compress Company. If a shipper sent his cotton into Weld and Nevill's warehouse, and another sent his into the Long Reach warehouse of the Houston Compress Company, the first would pay for the concentration at Weld and Nevill's plant 18¢ drayage to shipside. The two would be the same as regards rail transportation. The rate from Dallas to Weld & Nevill's warehouse from common points in Texas is 80¢. (R. 602). The rate to the Long Reach warehouse is the same. There is a switching or drayage charge from the Weld & Nevill's warehouse to the shipside which costs $8.10 a car, plus 4¢ for unloading. That approximates 3¢ per 100 lbs. On cotton that goes into the Long Reach warehouse, the total cost is 80¢ plus 50¢ per bale for the concentrating service. The latter is not rail transportation, but merchandising expense. There is no rail charge beyond the Long Reach warehouse.

We have not solicited business for any specific warehouse; we have solicited the patronage of the interior mer- [fol. 199] chants and shippers for the use of the one of the other. I do not know that our representatives offered the inducement that the rail transportation was, to our Long Reach warehouse, 18¢ per bale less than to other warehouses in Houston. They solicited business on the basis of [fol. 200] a 50¢ concentrating charge which included delivery to shipside to meet the competition of the Galveston Concentration Company. I do not know whether they did or did not offer the inducement that the rate to shipside through Long Reach warehouse was 18¢ less than they could put it through in other warehouses (R. 604). I think that the Long Reach plant should enjoy the same domestic rate as any other warehouse in Houston or Galveston. We feel that any adjustment would be unfair which attempted to place a greater charge upon our facilities at Long Reach for rail transportation to any warehouse in Houston or Galveston, if that adjustment left us at

a commercial disadvantage on that proportion of the cotton which is handled by interior concentrators having already, before it comes into competition between the port merchant and the interior merchant, been burdened with the cost of interior concentration (R. 605). By interior concentration I mean the charge of the interior compress or warehouse for the privilege of using its facilities for merchandising purposes. The question of commercial advantage seems to me to be the whole basis of the complaint of Galveston and Dallas. The delivery of cotton from the warehouse to shipside in the case of Houston and Galveston is a commercial matter, it seems to me. I would object to any adjustment which resulted in a greater charge for transportation for the same service to the Long Reach plant than to other plants in Houston and Galveston, moving on local bills of lading (R. 606). The question of whether I object to the same charge so far as the railroad is concerned cannot be separated from this question of commercial advantage enjoyed by interior concentrators with whom the port concentrator comes in direct competition.

[fol. 201] Our charge for the service rendered by our Long Reach warehouse is 50¢ per bale, including delivery to the ship tackle on our dock. That does not include delivery to the municipal docks in Houston. The 50¢ rate is not an adequate rate for the service we perform and it was placed in our tariff in order to meet the competition of the Cotton Concentration Company of Galveston (R. [fol. 202] 607). There is a cost in delivering to shipside, and whatever it is, is included in our charge to the shipper at 50¢ per bale. I believe there is no other warehouse at Houston, which includes in its handling charge the cost of delivery to shipside; it may be that the Channel Warehouse Co., does, but I do not know. The Cotton Concentration Company, and all other warehouses in Galveston do (R. 608). I am sure in our case that there is included in the charge made by the warehouse or the compress, an amount which represents the cost of delivery by dray or otherwise to the shipside. In the case of the Cotton Concentration Company, or the press in Galveston, whether they make the delivery out of the concentration charge or out of the charge for compression, there is also an element of ex-

pense there for shipside delivery. In the case of delivery to shipside out of the rates for compression at Galveston, the shipper does not actually pay any charge because he receives from the steamship company an allowance which more than covers the cost of compression and drayage combined. It costs him nothing to get his cotton to shipside. (R. 609). I did say that whatever cost there is, is included in the charge against the shipper made by the warehouse to compress, but the compress company has to figure an element of expense for delivery of cotton to shipside in their rate for compression. The shipper pays the charge for compressing at the warehouse. He pays total charge of 72½¢ per bale which is refunded to him by reason of the fact that he delivered his cotton in a high densitied condition. The charge of 25¢ per bale at the interior concentrating place covers the ordinary merchandising service, I think. For that charge, I believe, they unload the cotton, sample it, weigh it, and send samples, and ship it out on the orders, (R. 610) of the shippers. I believe that does not include loading it from the cars and loading it back into the cars. It includes also the use of the Compress premises as a merchandising place. That charge applies [fol. 203] where the cotton has been concentrated or has been moved onto a compress platform prior to the time that it is sold to the merchant who exports it (R. 611). If such cotton incurs an additional charge at Houston, it is because the port concentrator concentrates his cotton at the ports and merchandises it there, and the interior concentrator concentrates at interior compresses, and merchandises it there. The railroads do not participate in that service; and I have not referred to it as a transportation matter. It is a commercial advantage which is enjoyed by the interior merchant or compressor on that proportion of the cotton. I think the rate should not be adjusted so as to place the port concentrator at a more serious disadvantage in that respect than he is at present (R. 612).

Redirect examination:

My impression is that the loading and unloading at the concentration compress plant in the interior is sincluded in the compressing charge, and was included when the rate was raised from 50¢ per bale to its present level. There

was an increase in the allowance for compression at one time, and it was on condition that the service rendered by the compress company in that rate would include unloading it from the cars and loading it back into the cars. The railroad pays that instead of the concentrator. In the case of cotton purchased at an interior point, not a concentration point, the interior concentrator would pay the 25¢ interior concentration charge, and the port concentrator purchasing that cotton would not pay the interior charge, but would *under* undergo the heavier charges at the port. The concentration privilege in the service of transportation that is furnished by the railroads, would be of great value to the interior concentrator in the case of the shipment purchased by him. We do not use that concentration privilege from the railroad at all. We make a direct [fol. 204] shipment and the interior concentrator would make a transit shipment—two local shipments. I do not consider that the interior concentrator is paying anything for that first concentration. As far as the services of the railroad are concerned it goes into the general level of the rate; we pay for it where we do not use it, just as the man that pays it that does use it (R. 614). The longer period of free time granted by the railroads on through export cotton is for the purpose of adjusting the differences in dates so that the shipper will not incur the expense of demurrage if the railroad gets it there before the steamer can take it, or if it cannot be unloaded when it gets there. It is for the purpose of giving the interior shipper for export through transit facility, and making it unnecessary for him to have an organization at the port or a representative there to take physical possession of the cotton, and watch it and unload it and do those things to it which are customarily done on local domestic cotton. The free time is not so great on local bills marked for export. The maximum allowed on that class is twelve days, and on through billing is eighteen (R. 615). The average is ten and fifteen.

The takings for the years ending July 31st, 1923, by the northern mills was 2,403,000 bales of cotton; by the southern mills, 4,389,000. The total movement through the Gulf was 357,344. Some moved all rail, and some moved by New Orleans and water. We don't know what proportion (R. 616). The Houston shippers, according to the figures

which Mr. Douzell has compiled, sold a total of 40,000 out of the total used out of the northern and southern mills. One reason that the concentration charge in the interior points is so much lower than the concentration charge at the ports (R. 617) is because the concentration charge in the interior does not include the cost of unloading the cotton and loading it back into the cars. That is paid out of [fol. 205] the allowance for compression by the railroads. That is the railroads' allowance for compression on cotton which is shipped carriers' privilege of compression in transit. I do not know whether a different charge is applied to cotton which originates at the compress points by the compress company or not. They collect on that also, the charge of 18¢ per 100 lbs. from the railroad company for compression, even if it originates in the town, and the allowance which the railroad makes for compression is taken care of in the lower rate which it charges (R. 618). Where cotton is compressed in transit, and also where it is compressed at point of origin and shipped in a compressed condition, in both cases it is concentrated, and where it originates at the concentration point, the charges for compression are paid in the rate. The compression charge and allowance would be just the same, whether it was concentrated at the interior point or not. Both the shipper who does not avail himself of the compress warehouses in the interior for merchandising purposes, and those who do, pay the same rate for compression. A domestic rate at Houston is essential, because a very large domestic business is done at Houston, that is, dealings (R. 619) between merchants in the ports where the cotton changes ownership; some merchants in Houston who bring cotton in there handle it and re-sell it to merchants at the same place, and there is a very large exchange of business in that way. It is one of the largest markets in the United States.

Recross-examination:

In regard to the cotton traded in in Houston, it finally goes to points intra-state, or foreign. We do not re-merchandise most of the cotton which is handled at the Long Reach plant. We merchandise it. Cotton that we buy in the interior may have been merchandised by a merchant who does not export cotton. We buy it from him and he

ships it to us. We put it in our northside plant or in the [fol. 206] Long Reach plant and merchandise it there, that is, sample it and weigh it and class it, and store it away. We perform that service on all cotton that is handled for our account in the Long Reach plant. Some of that cotton has already had some of that service performed at an interior point. The commodity has already borne the cost before it comes in competition between these two classes of merchants (R. 621). We do not buy, as a general practice, cotton in even running lots in the interior. We buy average grade; just whatever the lot consists of, and that is the way the interior merchant buys it also. Cotton cannot be bought in even running lots as cheaply as it can in average lots. Our competitor in the interior buys exactly as we do in average lots. We do not buy it up like he does, because that is not our method of doing business. We use the method of port concentration; he uses the method of interior concentration. The port concentrator usually has his business at the ports, because the port markets are the largest markets, and he also takes into consideration the fact that a natural concentrating point such as Houston and Galveston are (R. 622), he is able to draw cotton from every side of the state, and draw it into one place, enabling him to do a larger business than he otherwise could do if he concentrates at many places in the interior, since no place in the interior affords enough business at one particular concentrating place to enable a merchant to do a very large business at that one place. It is just a choice between them. One man might use the method of doing business at a very large turn-over and a moderate profit, and another man might use the method of doing business at a smaller turn-over and a greater profit. I did that at Oklahoma City for a long time. I think the volume that is available at a port like Houston or Galveston, or New Orleans, is quite an element in a man's decision to do business at one place or another. As to standing the second concentration charge, it is a choice between people whether [fol. 207] they want to do a very large business at a moderate profit, or whether they (R. 623) want to do a small one at a greater profit.

We buy cotton from the man who buys it from the original producer; we are usually the second buyer. The first

buyer brings it in in small lots from the country points to what you might call a primary concentration point. About 48% of our business last year is cotton that was purchased at interior concentration points. The first buyer brings it into the concentration points or buys it there, and when he sells it to us or to the interior merchant, he sells (624) it free of charge for concentration. He pays the 25¢ which is assessed by the compress company for the merchandising. We consider the interior merchant and ourselves on the same basis even with the man who sells it to the interior merchant, if the man who sells it to the interior merchant has paid the concentrating charge of 25¢, or if he does and if he sells it to us, he has paid that charge. The interior merchant either ships that cotton out just as he bought it to the ports, and concentrate- it there, or he may classify it into even running lots where he bought it and ship it out without any further charge, except perhaps a nominal charge for marking. We must take the same cotton under our system of doing business, and incur that additional charge for the concentration and merchandising facilities at Houston. We have the privilege of doing it the other way if we want to, but we do not choose that way. Our system is based upon the plan of bringing all the cotton we buy into Houston and merchandising it there. I don't think there is any duplication of merchandising service in doing that (R. 625). I would not say that the average merchant in the interior is not qualified to class and grade this cotton for the foreign markets in Europe. Our plan of business is to gather this cotton along with the other 52% which has not been concentrated, into one place, and [fol. 208] re-classify the whole of it there so as to accumulate even running lots more quickly.

Redirect examination:

Each man in the cotton business has to assemble his cotton where he can get it in lots to sell. It may be further classified into even running lots at the same facility and exported or sent to the mill (R. 627). We have to minimize our expense on the 48% in order to compete with other buyers on that. That cotton is weighed, but not tagged as to grades when it comes to us. It is graded by the man who buys it, and he settles with the seller. There

is a tag number which identifies the grade. When we buy cotton in the interior we make no inquiry or difference as to whether it has been concentrated or has not been concentrated. The buyer never ships his cotton to export on the sellers class; it has to be graded by him. He and other cotton merchants employ the most competent classers we can find, men to know the character of cotton our customers want (R. 630). We do not accept the original classing on which to ship our customers under any circumstances. The second concentration is for the benefit of the shipper. If the interior concentrator buys that same cotton from this f. o. b. man, he would go through and grade it himself (R. 630). We cannot rely upon the classing of 30 or 40 people from whom we are buying, none of whom know the necessities and requirements of the foreign trade. The interior concentrator is in the same box in buying from the same man, and he has to go through it and grade it and class it at the same point he ships from.

Taking for illustration 100 bales of cotton that we might buy from the Ross Dry Goods Company at Wills Point, a non-export and non-compress point—the cotton is brought [fol. 209] into the smaller towns and cities and there sold to the local merchant, usually, and brought into Wills Point. The Ross Dry Goods Company calls us on the telephone and tells us he has 100 bales of cotton he wants to sell [fol. 210] (R. 631). We buy that sort of cotton; and about 52% of our business in the interior is bought like that. That 100 bales of cotton is delivered to the railroad by the Ross Dry Goods Company, which takes out a bill of lading to Houston, notify Anderson Clayton & Company. He does not specify whether it is to be compressed in transit or not; it is compressed, I understand, at Terrell by the Railroad Company, loaded back into the cars and finally delivered to us at one of our plants in Houston (R. 632). It is delivered at our Long Reach plant. We are out 80¢ freight charge. The 100 bales are unloaded from the cars, weighed and put on the platform, sampled in the sampling room and classed; each sample has a ticket showing the number corresponding with the tag on the bale. It is classed into grades, which means color and leaf and staple, which means the length of the fibre and the character of the fibre. The grade and staple is put on the sheet with

the corresponding ticket number, and the sheet is taken back to the platform and the grade and staple shown on the sheet is transferred to the remaining portion of the tag on each bale. The 100 bales may be found to be of 20 different grades and staples; it is taken bale by bale into its place in the warehouse and put with other bales of the same quality, grade and staple. It is taken through the high density compress and then put in its respective compartment (R. 633) in the high density press. We have not paid but 80¢ freight, and we do not have the 25¢ interior expense; our expense is 50¢ for merchandising at the port, and 75¢ for compressing. After it is put in its proper place in the warehouse in even running lots, when finally ordered out to shipside it is taken from that point and delivered within reach of the ship tackle. That makes a total expense of putting the cotton to shipside of $5.25 per 500 pound bale (R. 634). Taking the same 100 bales, shipping it to our other plant back from the water front, and putting it on shipboard, the cost is $5.25 per bale, the same cost. [fol. 211] It would be the same price for any merchant that wanted to ship through there. I am treating Anderson Clayton & Company exactly as anybody else. In buying 100 bales of cotton from Sanger in Dallas, we would have the same 80¢ to the Long Reach plant and the same total cost of $5.25 per bale delivered to shipside; we still pay the 50¢ merchandising charge and 75¢ high density compression charge. The man from whom we bought the cotton has paid the interior concentrating charge which had already been incurred (R. 635), so that our purchase from the interior concentrator gets on board for $5.25 per bale and that is true if we ship to our up-town warehouse, to shipside. It is included in the 50¢ rate. If an interior concentrator buys 100 bales at that concentrating point, the cost to him is 83½¢ per 100 lbs. to get it to shipside at Houston; it doe*n's* make any difference whether he ships it into Houston under local bill of lading (R. 636). It makes no difference to the shipper whether it is high densitied or not, except that sometimes he saves a little. It pays in case he ships it down on local bill of lading to Galveston or Houston to the Long Reach plant to high density in transit, it pays the total cost of getting it on shipboard. The 100 bales bought by the interior merchant, who concentrates in

the interior, from the man who has concentrated the same 100 bales at Dallas, bears the rate of 80¢ to the shipside density compress at Houston. He pays 72½¢ for high density compression and delivery to shipside. That makes a total cost of $4.72½ against the cost in our example of $5.25 (R. 637). We have, in our case, merchandised the cotton at the Long Reach plant and paid 50¢ per bale for that service. In the case of the interior concentrator, he has escaped that charge by using facilities in the interior for his merchandising operations. He has paid no interior concentration expense, the seller has paid it in both cases (R. 628). If the interior concentrator buys 100 bales at Wills Point and ships to a concentration point such as Terrell, he would pay 25¢ per bale there for the privilege of merchandising facilities and would ship from Terrell to [fol. 212] the shipside high density compress or sell to a foreign merchant and ship to the Shipside High Density Compress at Galveston, and pay 80¢ on a 500 lb. bale, or $4.00, plus 72½¢ per bale for high density compress, and delivery to ships, making his total cost on board ship $4.97½¢ against our cost on the same cotton, or $5.25 (R. 639). If cotton originates at a point north of Dallas, and is handled by the interior merchant at Dallas, compressed to high density to flat, and then exported direct to shipside, there would be 83½¢ for freight plus the difference between 95¢ and $1.25 for high density, which is 6¢ per 100 lbs., plus 25¢ per bale as a merchandising cost, and that would be $4.72 per bale. The charge of 72½¢ and 50¢ at Galveston for delivery to the ship tackle, is exclusive of wharfage charges in all cases. There are a great many different grades and staples of cotton (R. 640). It is the general practice to standard compress at the concentration point. It may be concentrated at one point and pressed at another. The tariffs of the Railroad Companies will permit concentration privilege in the line of transit even though the concentration be not availed of at the point where the cotton is compressed (R. 641). The railroads absorb the loading and unloading charge at the compression point, but they do not at the concentrating point, when the concentration is done at a point other than the compression points. There is very little cotton that is compressed at one point and concentrated at another point intermediate

to the port (R. 642). If the interior merchant sells the 100 bales to a foreign merchant, and if he concentrates at Galveston or Houston rather than at Terrell, he will be at an expense of 50¢ a bale, rather than 25¢ per bale, and the total expense would be $5.22½¢ in case he does just what we do. We charge 2½¢ more for the high density at Houston than they charge at Galveston. I believe that about 75% of the cotton shipped through the ports of Houston and Galveston is compressed to high density, referring to the export trade. It invariably moves standard in coastwise trade (R. 643).

[fol. 213] WITNESS J. L. WEST

I am Manager of the Transportation Bureau of the Dallas Cotton Exchange, and appear on behalf of the Dallas Cotton Exchange and the Arkansas Cotton Trade Association of Little Rock, Arkansas. I have been in the railroad business about 30 years, and in the transportation end of the cotton business for four and one-half years, or four years. I was with the M. K & T. Railroad when the two rate plan was put into effect on cotton, and I participated in that labor. I was with the M. K. & T. for 30 years and occupied the positions from stenographer to Freight Traffic Manager. During government control, I was Traffic Manager of a group of lines in Texas, about 6500 miles, and was Chairman of the Dallas district Freight Traffic Committee, and then went to the Dallas Cotton Exchange. The membership of the Dallas Cotton Exchange consists of about 100 men who are engaged in the purchase, sale and shipping of cotton. They will handle this year something (R. 644) over one and one-half million bales of cotton. Last year they handled nearly one and one-half million bales. The Arkansas Cotton Trade Assn., consists of dealers in cotton and compresses in Arkansas and there is embraced in its membership, or affiliated with it, the members of the Arkansas Cotton Growers Co-operative Association. I am speaking for them by their authority. The Arkansas people trade almost entirely in Arkansas. The members of the Dallas Cotton Exchange buy cotton in several states, the importance and size of their purchases being in the following order: Texas, Okla-

homa, Arkansas and Louisiana, and states in the southeast. The largest portion of our business is done through the ports of Houston and Galveston. We ship some through New Orleans and a good deal to eastern points all rail.

My Exhibit A-11, consisting of one page, is merely a statement of tariffs which I may refer to, giving I. C. C. numbers (R. 645).

[fol. 214] I am not testifying in behalf of so-called interior merchants against port merchants. Our membership comprises firms who do business on entirely different plans. We have merchants who concentrate in the interior and merchants who concentrate at Houston, and merchants who concentrate at Galveston and some who concentrate at Texas City. We have shippers who concentrate in the interior and re-ship to foreign destination, and to New England on through bills of lading, who do not use, as far as concentration is concerned, any of the seaports. They are satisfied with the concentration of cotton in the interior. Anderson Clayton & Company are members of our exchange, but they are represented by other parties. We complain earnestly that there is a discrimination against some cotton shippers and merchants, and a preference of others in the adjustment of rates in effect to Houston, Galveston and Texas City from points in Texas, Oklahoma, Arkansas and possibly Louisiana (R. 646). That prejudice is against some of our members and in favor of others, and it is in favor of still others as against the rest; it is such that we among ourselves are on an unequal basis, and as a whole we are subjected to the disadvantage and prejudice by reason of the advantage enjoyed by warehouses located at the water side. The whole issue is confused by taking into consideration freight rates to the wharves, or warehouses and compresses, and the cost of the service of those warehouse- and compresses to the shipper. Those are entirely separate and distinct things. We are here to discuss only the propriety of the rates assessed by the railroad (R. 647) and we are complaining of the prejudice and the preference in the adjustment of the freight rates alone. The statement that the cost of delivery of cotton to the shipside at Galveston is 80¢, or that the cost of delivery to shipside *is* Houston is 80¢ is entirely erroneous. The error

grows out of the fact that the compress charge for putting cotton to high density includes delivery to the ship, and the cost of that delivery to the ship is taken into account in fixing the charge for the compress service and is actually paid [fol. 215] by the man who pays for the compressing (R. 648). In these days of pretty close business competition and close figuring it is absurd to say when the high density compress at Galveston agrees to compress and deliver cotton to the ship for 72¢ per bale that they are leaving out of calculation and not charging the shipper the amount it costs them for trucking and delivering the cotton from their presses to shipside (R. 648-9). The representatives of the Galveston High Density Presses testified in the Weatherford Crump case that the actual cost to his concern of delivering the cotton to the shipside was from 12¢ to 18¢ per bale. That cost is lower where the cotton goes to a ship berth at the pier where the high density press is situated. At Galveston the wharves are along at the ship's berth at such places and the cargo must come to them there so that the high density presses pay a higher charge, running as much as 18 and possibly as much as 20¢ a bale, for delivery at their piers than the one on which the compress is located. Mr. Clayton admitted that there is a cost included in his warehousing charge of 50¢ at the Long Reach warehouse at Houston, and that they are not performing that service free of charge for anybody, not even for Anderson, Clayton & Company. We all know that cotton that goes into compresses at Houston and Galveston, which are away from the water front, pay a charge from those warehouses to the shipside. That charge runs from 3¢ to 3½¢ per 100 (R. 649) pounds; somebody pays it. At Houston the cotton is drayed at 3½¢ per 100 lbs. from the up-town presses and warehouses to the water front shipside. The railroads publish in tariffs, which are referred to in Exhibit A-11, a rate of $8.10 for switching from the up-town warehouses and [fol. 216] compresses to the municipal wharves at Houston. That $8.10, however, does not include the loading at the up-town warehouses into the cars, nor does it include the unloading at the docks. The latter charge is 4¢ per bale, so that the cost of a 75 bale car from the up-town warehouse to the dock is about 3¢ per 100 lbs. There are other compresses located on the bayou, by the ship channel, from

which the cotton is drayed down to the turning basin to the ship lying there, at a charge which I understand approximates 3¢ per 100 lbs. Those charges are paid by the owner of the cotton. He has already paid 80¢ from the point of origin, and when he moves his cotton to the ship, he must pay that additional cost. If he employs the railroads to switch it, they charge him $8.10 per car, or he can, after paying their charges, submit a concentration or transit claim in which event the railroads charge the shipside rate. Any cotton which goes into the Long Reach warehouse at Houston pays 80¢ (R. 650) per 100 lbs. There is no charge [fol. 217] for switching or drayage, or there is a charge which Mr. Clayton was unable to estimate, which however, is included in the warehouse expense. According to my knowledge and belief, the cost to the railroads of the service is substantially the same and the value of the service to the shipper who pays for it is no greater in one case than in another. There is another class of discrimination; The cotton merchant who concentrates his cotton in the interior, and, after merchandising it, has it ready to ship to Liverpool or other foreign points, or to New England coastwise, and he employs a through bill of lading. There may be some advantage in the saving of interest in using the through bill, but that is something that has nothing to do with transportation. He is entitled to the through bill of lading, but the railroads charge him for the identical same service that they perform for the Long Reach warehouse at Houston, not 80¢ but 83½¢ per 100 pounds (R. 651). He suffers a disadvantage of 3½¢ per 100 lbs., or approximately 18¢ per bale against what others pay who use the Long Reach warehouse. There is no difference in the service or the value or cost of the service, which justifies that difference of 3½¢ per 100 lbs. I agree with Mr. Clayton that 18¢ per bale is a small amount in comparison with other factors. But it might look pretty large to some other persons. It is 18¢ per bale, and it measures the amount of discrimination in favor of the Long Reach warehouse users against those who ship on through bill of lading, or who concentrate at warehouses and compresses back of the water front at Houston. We know that the Long Reach warehouse has solicited business in the interior, and has stated to cotton merchants that they ought to use the Long Reach

warehouse because they save 18¢ per bale in the rail transportation (R. 652) charges. I do not know whether they have done it or not. I do not offer that situation as constituting a reason for changing the rate, but there must be a reconciliation if rail transportation is to be furnished on even terms to all shippers of cotton enjoying a substantially equal service. It will not take away from Anderson Clayton [fol. 218] & Company any advantages as compared with other people, and it will not give anybody else an advantage over them. It will equalize and put on an even keel all the wharves of the shippers, all the warehouses and compresses, and everybody engaged in the concentration or handling of cotton in Texas and from these other states, so far as railroad transportation is concerned. It will not equalize them as to all the trade conditions, which in my judgment have nothing to do with the case. For a great many years, the rates on cotton from Texas points to the ports for local application and for export or coastwise ship movement were equal. My experience with Texas Railroads dates from 1893. At that time, the Texas Commission, I think, had been in existence about (R. 653) two years or perhaps three. Up to 1910, the Texas Railroad Commission rate was applied to the water front and there was no difference between the export and the intra-state domestic rate. In 1910, the Texas Commission made a reduction in their rate from 55¢ to 51¢ per 100 lbs. The railroads refused to apply the Texas Commission rate to shipside, and held to the 55¢ rate. A terrific pressure was brought to bear upon the railroads by shippers, for the purpose of securing equalization as between the local shipper and the through bill of lading shipper. In that case we had substantially the same situation we are considering here and that was that the through bill of lading shipper had to pay more money than the man who shipped local. The railroads yielded and applied the rate of 51¢ to shipside. That condition continued for several years, and it was in 1917, September 18th, Supplement #6 to S. W. Lines Tariff #43-J, F. A. Leland's I. C. C. #1185, shown on Exhibit A-11, that the railroads [fol. 219] got up courage to charge more to shipside than the Texas Railroad Commission's local rate. I participated in that effort (R. 654). The railroad men at that time wanted to make the rate 60¢ for export because that was

the railroad rate and the Commission's rate at the time the Commission began to cut the rate down, but we could not use the 60¢ rate because we found that the cost then, as now, of the handling of the cotton from the presses and ware-[fol. 220] houses to the shipside limited the amount which we added to the local rate to make the shipside rate, and then we found that difference to be 3¢, now perhaps 3½¢, so we added 3¢ to the Texas Commission local rate to make our shipside rate. Therefore, from 1890 to 1917, the export local rates from points in Texas to the ports were equal except for a very short period in 1910. There was no objection to the correction in 1917, because it did not make any difference, since nobody was located at the waterside who could enjoy the local rate without an expense for delivery to the ship. That was the situation when the Weatherford case was tried (R. 655). But this year a large and powerful firm decided to locate a warehouse on the waterside where the ships would and could come and take the cotton right out of the warehouse. That injected a brand new factor into the situation, and made it necessary for us to take some action in reference to the discrimination and that is why we are here. One solution of this situation would be for the two commissions to designate the compresses and warehouses at these ports to which the domestic rate of 80¢ should apply, and the presses and warehouses which they consider are so situated that the export rate should apply. I think that plan, however, is impracticable for the reason that there is such a fine distinction between some of these places as to their location, that it would be difficult, if not entirely impossible to say that one is entitled to a local rate and the other to the export rate. There will be other warehouses and other compresses erected, and the case might have to be reopened every time, in order to determine the status of the new warehouse (R. 657). The other plan is to apply one rate for local and for shipside or for coastwise movement. If that is done, there should also be a slight modification of the present transit rules at the ports which would permit the railroads to absorb the cost of drayage not to exceed 18¢ per bale from the warehouse to the shipside. I suggest that so that the railroads may not be called upon in all cases to switch the cotton. That is a service which is extremely expensive to the railroads, as

well as from the standpoint of the shipper, and it is al-
[fol. 221] together wasteful. I am sure the railroads would prefer to absorb not more than 18¢ per bale rather than be compelled to switch the cotton. That arrangement will put everybody at the port on an absolutely equal basis, and the traffic will not be called on to bear one cent of additional charges or expense, and there can be no complaint of discrimination or preference. The shipper would pay 83½¢ from Texas common points when his cotton is delivered, no matter whether it is delivered in Houston, Galveston, or Texas City. When that cotton is ready to go to shipside, it will be sent either by switching or by dray and the shipper will present a claim supported by his expense bills and his receipt for the actual amount of (R. 657) cost incurred by him for that second movement to the shipside. The limit of that would be 18¢ per bale; I don't see any objection to its being 20¢, but I think 18¢ per bale would be sufficient. It seems to me that that would leave the Long Reach warehouse in exactly the same position with all the rest of the people. If the concentrators were able to show that it cost them 1¢ to 2¢ per 100 lbs., say 5, 10 or 15 cents a bale, the actual cost which they pay either through the item of warehousing or merchandising charge, or by handling it themselves, or by employing contractors to do so, they would receive the benefit of that providing it didn't exceed 18¢ per bale and they would be on an equality with all the rest of them and not suffer any disadvantage. I have no complaint as to the fairnes or justness of the present rate. In selecting this one rate, we did not wish to urge the selection of either the 80¢ or the 83½¢ rate; that is immaterial, because everybody would have to pay it. But for the general welfare of the railroads in this part of the country, we do not think it is advisable that any reduction [fol. 222] of revenues result from these operations (R. 659), if it can be arranged so the railroads' revenues will not be reduced, and so we will not have to pay any more money and that in my opinion is the ideal way to fix it. In other words, in adjusting this matter for Texas, use the present rate of 83½ cents per 100 pounds. I am not proposing anything as to the rate, but what I state is a situation which would be satisfactory to us and that would not result in imposing upon the traffic one cent of additional burden, be-

cause the traffic is paying substantially or almost exactly 83½ cents from Texas to shipside today. It pays 80 cents first and then pays 3½ cents afterwards. There is not a bale of cotton from Texas to shipside, Houston, Galveston, Texas City, and there has not been for years, that pays less than 83 cents, in some cases it may not be quite 83½ cents. I should have made an exception of the cotton that goes through the Anderson-Clayton Warehouse, of course, that is what we are kicking about—it does. I mean as to these other places. The cotton we complain of goes through the Anderson Clayton facilities for 80¢ and we propose to increase the rates on that from 80¢ to 83½¢. That would not involve an increase in the rates on cotton; it would not raise the cost of putting the cotton on board the ship. It would raise the first charge paid to the first railroad from 80¢ to 83½¢, but it would eventually get on the ship at a railroad charge of 83½¢ just as it would if it went through any other warehouse. The railroad would receive the benefit of that 3½¢ on cotton moving through the Anderson Clayton facilities, less whatever the shipper could prove to be the cost to him from Anderson Clayton warehouse to [fol. 223] shipside (R. 661). It would reduce the charges borne by the traffic if you adopt it as the one rate 80¢ instead of 83½¢, and I would not object to that except from a broader viewpoint. We like reductions but I don't think the producers would gain sufficient benefit from a reduction of rate in the traffic of 3.5¢ a hundred pounds to warrant the Commission in doing that. The absorption of the 18¢ per bale drayage charges, would be an absorption of an amount slightly more than the switching charge, but the railroad on the other hand would not be called upon to perform any service. In answer to when you s art to absorbing more than the railroad charges you are not starting to equalize commercial conditions or location of plants, I want to say that what I have suggested has been in effect in Galveston for many years and is in effect today. *What I have suggested has been in effect in Galveston for many years, and is in effect today.* It has not been in effect in Houston, but I do not see why it cannot be done in Houston without damage. I do not think that it is an equalization of commercial conditions of itself. The amount involved is so small as to be entirely negligible; it is limited. I

would not advocate an absorption of cost regardless of the amount. I would fix a minimum within which I believe all of the cotton from the warehouses at Houston, Galveston, and Texas City, can be moved to the water front. That has been in the railroads' tariff since 1910, but the railroads have never been called upon to refund it because the shipper is about even without adding in a claim (R. 663). It costs the shipper about 3½¢ to move the cotton when he ships it in on the local rate, so there isn't any necessity for using the refund.

I do not see that that plan would be equalizing locations [fol. 224] or commercial conditions (R. 664). It is my opinion that you could not require the railroads to absorb charges that are not railroad charges but I think they would do if it were suggested by the Commission. I will take my chances on that. I do not think that charges are being assessed equally at Houston. The rate from north Texas to Houston is 80¢ per 100 lbs. fixed by the railroad commission of Texas; the switching rate from the ware-[fol. 225] houses where the 80¢ rate applies, is $8.10 a car to the docks; that rate was fixed by the Railroad Commission of Texas and filed with the Interstate Commerce Commission. These two rates added make less than the carriers' published rate to shipside, giving Houston that much less in disregard of the provision against the through rate exceeding the sum of the intermediates. That is not very important but I think it is a bad adjustment.

There is another application which I think is illegal. Where you find two bales of cotton lying side by side at the Long Reach warehouse, (R. 665), both from exactly the same point of origin but forwarded by different shippers. One is sold while in the warehouse to a cotton merchant at Houston, and he takes possession of it. The ownership of the other bale is retained by the man who forwarded it from the interior, with the purpose of forwarding it on to Liverpool, and it is forwarded on to Liverpool without changing ownership. It moves from point of origin to destination, and is subject to the railroad charges of 80¢ instead of the published rate of 83½¢. I do not blame the railroads for that, for they could not distinguish between the two bales, but that is an additional reason why my plan should be adopted to place those two bales on an equality, and I do

not see how you can get them on an equality in any other way (R. 666). The Texas Railroad Commission rates should be the same as the inter-state rates. If there is any difference in the demurrage rules in favor of the through shipper, I think we had better get them together (R. 667). When the 83½¢ rate is charged, the traffic is subject to regulations on interstate or export traffic, and the demurrage rates provided on that traffic apply. If the traffic pays 80¢, it is then presumably intra-state, but if you follow it a little while, you will find it is actually inter-state, or export. It seems to me that there is not the same necessity for the Texas Railroad Commission to make demurrage rates on through bills of lading as there is for the Railroads [fol. 226] to do it, because the rates of the Texas Commission do not apply on through bill of lading stuff. They apply on traffic for local delivery. If the traffic does not take the inter-state or export rates, the intrastate demurrage rules apply, and we sometimes have to pay them (R. 668). My testimony applies with equal force to the High Density Compress Company at Galveston, as to the Anderson Clayton's Long Reach plant at Houston. The situation is not the same for the Long Reach plant at Houston delivers cotton to shipside at the charge which it makes for its warehousing, the cost of which Mr. Clayton was unable to state. At the high density presses in Galveston on the other hand, we know what the cost is because it is a matter of record. The high density presses take cotton shipped into Galveston on a local rate of 80¢ and deliver it to the sihpside for the high density charges. They are fooling themselves (R. 669) and everybody else in making a lump charge for their services, concealing the fact that they are making an actual charge for delivery to the ship. The high density compresses in other places similarly situated ought to reduce their charge for high density service by the amount of the cost of draying cotton from the press to shipside and they would if this proposition went through. If the shipper proposes to a high density press to have 50,000 bales of cotton pressed at a charge of 54½¢, the shipper to handle the cotton from the compress to the dock, the compress would do it. The charge for delivery to shipside is there, and the shippers are paying for it, and there is some at Long Reach warehouse. Mr. Clayton says so—he

doesn't know how much (R. 670). In my experience as a railroad man, we were confronted for a good many years with the representations of shippers and Steamship Lines [fol. 227] that they were not given a fair amount of free time on through shipments, and I think they were right. It is necessary from the standpoint of the actual physical handling of traffic that there be longer free time on traffic going through from railroad to ship than on traffic for destination at a local place in the port. That is true because of the uncertainty of the arrival and departure of ships, and of the arrival and delivery of the cotton by the rail carrier, with regard to the water carriers schedule. The interchange of traffic between water and rail carriers involves contingencies that ought to be taken care of by a larger allowance in free time. The only reason for the difference is that the connection between rail and water carriers is uncertain and a little more leeway is necessary. The consignee of a local shipment (R. 671) is not hampered by the uncertainty of the arrival of a ship. He has his plant there and forty-eight hours has been considered sufficient time to unload it. There was confusion for years about the demurrage rules, and about 1914 or 1915, I think the Interstate Commerce Commission sent a representative to Galveston who stayed there for about a year, and worked out a solution, which the Commission suggested to the railroad, and that is the plan that is in effect today. I think that on the grain export movement from Texas, the same rates are applied whether for export or domestic; and on export grain there is 10 days free time as against two days free time on domestic grain (R. 672). I think the present free time allowance on export cotton was fixed by the Commission after years of investigation, and it was fixed before the rates were made for export, I think about two or three years before. I do not think that the demurrage rule or demurrage rates, have anything to do with the reasonableness of the rate. In fixing switching charges, [fol. 228] the railroads do not consider the cost of service, because nobody knows what they are. It is almost impossible to determine them. The General Manager of the Burlington while we were discussing the switching cost in St. Louis in the joint yards between the Burlington and the Katy, told me at one time that the cost was $1.70 and the next time $17.80.

WITNESS F. R. DALZELL

I am Traffic Manager of the Houston Cotton Exchange, where I have been about three years. Prior to that I was with the Santa Fe in the Traffic Department in various capacities for about 15 or 16 years. (Mr. Scott: We will admit Mr. Dalzell's Traffic experience.) The Texas intra-state rate is the basis for the inter-state adjustment. The Texas intra-state rate, when made and at all times since, has contemplated the service of concentration. It provided that cotton may be concentrated between the point of origin and destination without charge. When the rates were made, the service of concentration was a necessary service, and was employed virtually in 100% of the movements. In recent years, the concentration of cotton at the port has grown to some extent. It does not necessitate any interior concentration. When the port concentrator buys cotton in the interior, that has been concentrated, it is merely because he finds the cotton at the concentrating point. It has not been brought there on his account or by him or to any desire or convenience to him. It is there simply because someone else got to the cotton first. The concentration that took place in the interior on cotton that is bought by the port concentrator is of no value to the port [fol. 229] concentrator while the interior concentrator finds it a valuable and a necessary service. The port concentrator does not require it in his business, nevertheless they both pay the same rate on intra-state shipments and inter-state shipments, that is, the shipside is predicated upon the Texas rate. That means that the port concentrator is paying for the interior service that is performed (R. 675) by the railroads in concentration and he does not use it. Mr. West has correctly stated that the present arrangement of 83½¢ to shipside against 80¢ for the Texas intra-state rate was not made with the specific intent of creating an equalization between the two; it was born- simply because of the fact that the railroads felt that they ought to have more money on the inter-state traffic, that is, shipside traffic. The original plan was to come to the rate of 60¢ which was 9¢ higher than the then Texas Commission rate, but that was found impracticable because the shipper could then put his cotton into a plant located at Galveston, and get it out of there for an average dray cost of 3¢ per 100 pounds,

and by that method he beat the through rate that they thought they ought to have. Therefore, the railroads took a difference of 3¢, not because they thought that was sufficient, but because that was all they thought they could get as a practical matter.

I think that high density compression was started at Galveston about 1914 (R. 676). The difference in the two rates of 3¢ did create a practical equalization, but because the railroads had to limit themselves in that way and not because they tried to equalize. The concentrator in the interior at that time, had to pay the cost of loading and unloading his cotton because the railroads did not include the cost of loading and unloading cotton at concentrating [fol. 230] and compressing points in the compress allowance. At Galveston, things have changed since that time; when the present rate allowed interior compresses was put to 20¢ per 100 lbs., about the Fall of 1918, it was provided in conjunction with the increased allowance that was made to the presses, that the allowance would also include payment to the presses for the service of loading cotton and the topping of it. That destroyed the equalization that had existed before, because while the interior concentrator was (R. 677) relieved by that of the necessity of paying for his loading, the concentrator at the port was not so relieved. He still had a drayage expense that was equivalent to the difference between the domestic rate and the shipside rate, and in addition, he had a loading expense that the interior concentrator did not have so that for five years at least we have not had equalization. We insist that there are two radically different classes of traffic before us. One might be called raw material, cotton in a package that is not fit to be exported. Cotton that must go through the process of being prepared for export, but we claim that there is no difficulty in distinguishing between the two, and we think it would be wrong to mix them up under one rate. On the other hand, we think we have two classes of freight; one a raw material coming into manufacturing plant, which is practically intra-state traffic; and that traffic is of such a nature that it is not in condition to be exported until after it has gone through this process. It then for the first time becomes a commodity that is in shape to be exported and there is no such great similarity between the two that the problem can be solved only by

making one rate (R. 678). We think the question of whether a shipper is able to induce a ship agent to send a ship to [fol. 231] his dock is a very poor test for determining what rates should be used. The test of the difference between the two is much more certain than anything of that sort. We think that the present intra-state rate is high enough and should not be advanced; for one reason, because when it was originally made it contemplated the inclusion of the expense to the railroads of concentrating in the interior, and it did have to bear that expense. The port concentrator created a through movement from the interior to the port without that expense to the railroads, and the present intra-state rate no longer involves an expense in view when the rate was made. That concentration service extended by the railroad is a service of value to the shipper (R. 679). We believe that the Texas intra-state rate should not be advanced, and I offer an exhibit to show that in fact it is too high.

(Exam. Keeler: It seems to me that we are getting out of the scope of investigation when we are going into the matter of the level of the rates to the ports.

The Witness: I am offering this exhibit to combat the suggestion that was made here that the rate—particularly the intrastate rate be increased 3½ cents.

Exam. Keeler: But our proposition here hasn't anything to do with the level of the rate. The proposition is this: Is there any different circumstances and conditions or services which justify a higher rate on traffic going on through bills of lading to port and then going on through, and traffic which is going to the port on local bills of lading, and is exported, and traffic which is going to these different up-town concentration points. The question is simply as to whether there is any difference between the conditions which justify a higher rate on that traffic and there [fol. 232] isn't any issue as I can see with regard to the level of the rate.

Mr. Fulbright: In that connection, while we are not trying to attack the level of the rate in this proceeding, I wish to call your attention to the notice sent out which stated one of the questions to be determined was whether any change should be made in existing rate in order to avoid and remove such undue preference if any, that may result in favor of

one of such shippers, or against other shippers, or localities, or against any other shippers in other localities.

Exam. Keeler: Yes that is the way the notice reads, but I don't consider it as bringing into issue the matter of the level of the rates. If you are going to take this question up, you have also got to take up the question whether the 83½ cent rate on export traffic is too high which brings in the level of both rates. The question before us is not in regard to the level of rate, but merely the matter of relationship of rates on the different classes of traffic.

Mr. Fulbright: It is my purpose to next take up the shipside rate and by showing that it involves a great deal more service than the intrastate rate, show that it should be higher.

Exam. Keeler: That is perfectly all right and proper, but I do hesitate to go into this question of the level of the rate in this proceeding. What is your view, Mr. Chairman?

Commissioner Gilmore: Mr. Examiner, in view — the suggestion of Mr. West that the rates be made the same, I can see no harm at least in permitting this exhibit to go in. I concur however, in your view that the level of the rates [fol. 233] intrastate are really not involved in this proceeding.

Exam. Keeler: And this adjustment should be made putting into effect one rate—it doesn't necessarily mean that the Commission must recommend a specific rate but merely establish a —parative rate or spread between the two rates and the matter involved here does not bring into issue the question of the level of the rates.

Mr. Fulbright: Of course if that is the ruling these exhibits would not be properly put in evidence and would have to be withdrawn.

Examiner Keeler: The ruling is that this exhibit A-12 will not be considered in evidence.

Exhibit A-12 is a reproduction of a letter dated October 19th, 1923, written by the director of the port at Houston, showing the wharf assignment to the various steamships that serve the port of Houston. They must take business at these wharves that are so assigned to them. They are free to move about as they please, but this is their home wharf and any shipper in Houston has the right to and as a matter of practice does deliver freight to them at this

assigned wharf (R. 683). The Steamship Line must pick it up there.

I compiled the exhibit introduced by Mr. Womack, showing switching charges from the respective warehouses. I will furnish the tariff authorities for it, if the Commission desires (R. 684).

The first item on Exhibit #10 is Exporters' Compress & Warehouse Company, served by the Southern Pacific and the charge to the wharves, 2, 3, and 4, served by the I. & G. N. and the Houston Belt Terminal Company, is $14.40 a car; that is, joint line charges, which is made by adding the charge of each line. The Southern Pacific charge is $8.10 and the I. & G. N. charge is $8.10. The two tariffs [fol. 234] referred to in Exhibit A-11 would make $16.20 for that service in that particular spot, but I have shown the charge of $14.40, it being $8.10 for the Southern Pacific and $6.30 for the Houston Belt & Terminal Company, which can perform the service in connection with the Southern Pacific.

When we started the exporting business in Houston, we had no facility for getting to compress and to the ship except the box car. The switching facilities were inadequate and we were tying up equipment there that was needed for bringing cotton into Houston and shipping it out by rail to other ports, so we immediately tried to utilize the Shallow Draft Bayou. After about a year of effort, we got one man to risk establishing a barge line. He started about September, 1922 with three or four barges, and in a very short (R. 686) time after he started, it became perfectly plain to all of us that the barge was going to be a most valuable auxiliary to our property. The pioneer did not have enough equipment and was not making money on his investment. The cotton exporters of Houston organized a company, I think is capitalized at about $50,000.00, and took over the first barge line and added to it, and I think they are now running eight barges with two tow boats. It is not certain now whether that was a good or a bad investment, but it is a most valuable and efficient auxiliary to our port. A majority of the cotton exporters of Houston are stockholders in it; but I believe that Anderson Clayton & Company are not among the stockholders (R. 687).

I believe that the present inter-state rate might be higher

than it is. It includes more miles of transportation than the intrastate rate. It includes also the expense to the carriers of the service of concentration for which service [fol. 235] the railroads get nothing. In my opinion, one very necessary thing to bring about any sort of equalization is to provide for a charge for the interior concentration. We recommend 5¢ per 100 lbs. as being in our opinion perhaps adequate remuneration for the service the railroads perform. (Objection was made to this testimony on the grounds that an extra charge for interior concentration [fol. 236] was not involved, which objection was sustained by Examiner Keeler) (R. 688). (Esaminer Keeler: The ruling is that ou may show that a concentration service is performed without attempting to go into all the details and say what the level of the concentration charge is) (R. 696).

The privilege of interior concentration involves considerable extra service on the part of the railroads.. The through rate is applied on what is in every sense (R. 697) two complete and separate shipments; the cotton comes into the concentration point, and the Railroads perform a switching service, make a complete delivery, makes a freight bill, collects the charges, and goes through all the details incident to the terminal delivery of any shipment of freight. Subsequently there is again the full detail of a separate shipment in and on the movement out, which adds to the expense to the receipt of any shipment is gone through a second time. There is also the probable expense of switching. That shipment has been taken on to its final destination, and once more a complete delivery with all of its incidental expenses is made, and the shipper makes a claim thereafter and that claim entails a considerable amount of work for the railroad to perform and a certain amount of work in clerk hire and checking etc. The shipment must be followed back to determine in many instances that there has not been a previous shipment, and the checking of concentration claims requires the service of a specialist in the railroad's general office (R. 698). When the cotton is compressed in transit at the concentration point, there is not the service and the expense of the claim, there is not the making of two additional sets of documents, such as the freight bill and the collecting of money on the inbound shipments, and making the second bill of lading and weigh bill on the second

shipment. There may be the expense of switching into the press and out. The person availing himself of this interior [fol. 237] concentration is able to perform his merchandising services at that point, and it is a service of value to the shipper. The cotton going out on the concentration would not be the same bales as that which came in on the documents that are coupled up with the outbound documents to form a through shipment. There is also in the concentration of cotton, an item of car detention, both on the movement in and on the movement out, which adds to the expense of the carrier (R. 699).

The existing difference between the domestic rate and the shipside rate is not as great as it should be. The drayage absorption amounts to 13¢ at Houston and 22¢ at Galveston. The 22¢ absorption at Galveston, wherever it is actually made by the railroads, results in the railroads paying back to the shipper a fraction over 4¢ per 100 lbs. That absorption would not be made unless the shipper had paid 22¢ per bale dray-ge (R. 700). The effect of an absorption of 4¢ per 100 lbs. at the port would be to reduce the carrier's revenue on shipside consignments to 79½¢ per 100 pounds even less than they earn on local delivery. The drayage absorption at Houston is 13¢ per bale. The minimum charge for drayage at Houston is 18¢ per bale in addition to which there is a cost for loading on the dray of 10¢ per bale (R. 701). With the exception of the Houston Compress Company, the compresses at Houston do not absorb in their compression charge the cost of drayage to the waterside. The allowance at Galveston is in Item 65, Supplement 16, Texas Lines Tariff #29, Fonda's I. C. C. 79 (R. 702).

To apply one rate that would be the shipside rate and be applied to all concentrators, whether they do business near the front, or at the front or back from the front, and allow a refund of the cost of drayage to the shipside by the railroads who rehandled it to the shipside, is not at all practical. It has the effect of placing a premium on a badly located [fol. 238] warehouse and penalizing the large investment that is entailed in a properly located warehouse. Secondly, it will result in unequal revenue to the railroads for the same service to the same town on the same class of freight; everybody would pay 83½¢ to Houston, and the railroads

would be called on to refund the amount that it cost at each press to get that cotton from press to ship. That amount would be least at the best located press, and it would be greatest at the press that is suffering the poorest location; in any event the railroad revenue in no two instances would be the same although the service of the carriers would be the same and the commodities the same; thirdly, it would penalize us at Houston for a second concentration of cotton when, as a matter of fact, so far as we are concerned, it would be a first concentration, because the concentration in the interior (R. 703) was not performed for our account and we get no benefit from it; fourthly, it would result in endless controversies between the railroads and the various shippers at the ports. Each shipper would believe that he was not getting enough refund and that some other railroad was treating some other shipper more liberally. There would also be a controversy between the shippers at one point and the shippers at another point. It would be impossible to get anything like uniformity in the prices that would be charged by the various facilities that were used in getting cotton from warehouse to ship. At Houston we have drays, switch cars (R. 704), and we have a barge. The bulk of the switching is done by two railroads, the I. & G. N. and the Southern Pacific, and a larger quantity of cotton comes into Houston by railroad other than those two, which are dependent on the I. & G. N. and the Southern Pacific for the service of switching to compress. The roads [fol. 239] which have the other lines at their mercy, would constantly raise their switching charges. The Barge lines are owned by the exporters, and it has not yet been determined whether or not they are making a profit on the investment; while the business is at its peak and all the barges occupied they are doubtless showing a profit but for five or six months at a time there is no cotton and the investment lies idle; I can see in this refunding plan endless controversy between the owners of that barge line and the railroads, as to what the barge is entitled to, and there is [fol. 240] serious danger there on the question of rebate being brought into prominence (R. 705). The dray is quite beyond the control of the carriers or of any of the regulating bodies, and at the present time is operating from only two or three presses; the other exporters and presses are

entitled to the benefit of dray service, and under any equalization plan should be able to use that valuable facility and get a refund of what it cost them. Mr. Womack's exhibit A-10 shows that each press has several ways of getting to the different docks; some more convenient today and some more convenient tomorrow (R. 706). Many presses have two ways of switching to the docks. Sometimes they want to use the one that will cost $8.10, and at other times they may find it necessary to use the one that will cost them $14.40. If we start to have real equalization, the only way to do that will be to let the shipper bring in his receipt showing how much he paid to get to the ship, and pay it without any question. I think that is the only difficulty which would arise in connection with the suggestion that the carriers should absorb an amount equal to their switching charges. My fifth reason for opposing this suggested equalization plan is that the interior concentrator who goes to the ship on a through export bill of lading or a local export bill of lading would be going to the ship under a demurrage rule that would give him a rather extended free use of that car as storage space. Our concentrator in Houston would (R. 707) have to provide his own storage. The interior concentrator would have 18 days free time, whereas the Houston concentrator using the barge line under a refunding basis, would get no refund for the amount it cost him to store that cotton in Houston, for an equivalent period of 18 days. Even if the man at Houston used a switch car under the refunding basis, he would then have some free use of that car at the warehouse, but only to the extent of 48 hours, after which time he would pay a very high rate of demurrage. Port demurrage rule (R. 708) gives the shipment 10 days free time; the average rule provides in substance that [fol. 241] there will be no closure of the records on one car, and that instead the matter of demurrage will be treated by using the one month as a unit. The business for a month is taken and all of the cars that have come in during that period are used to arrive at an average, so that a car may come in and take 40 days, but if there had been enough other cars unloaded in one day, thereby earning a credit of ten days free time, that credit is applied against the car that remains 40 days, and wipes out the penalty that otherwise would be assessed. In connection with the aver-

age rule, it is provided that 18 days free time will be the maximum on any car without penalty. It applies at a wharf or warehouse; it takes into consideration everybody's freight of any character coming to a particular wharf or warehouse. The average rule is not confined to the business of one shipper; it takes into consideration everybody's freight of any character (R. 709). I do not mean that any car may have 40 days free time under the tariff; the maximum is 18 days.

The suggestion about equalization and this refunding feature, is predicated, I believe, on no charge being made against us for a second concentration. That, we believe, is wrong. We believe that a charge should be made for second concentration. It is an expensive service to the railroad and should be paid for. Houston is in a sense also an interior point, in that we ship great (R. 710) quantities of our cotton through the port at Galveston, and as I understood Mr. Griffin, his thought was that we should be charged for the second concentration. That is a hopeless inequality that makes the whole suggestion valueless. If we get second concentration free of charge it naturally would give the interior a second concentration free of charge also. A second concentration in the interior free of charge would only [fol. 242] serve to aggravate the situation that exists there now.

Exhibit A-13 is offered to show that there is performed for the interior concentrator additional service which is not used by the port concentrator, and is directed to Mr. West's testimony that the railroads (R. 711) perform iden- [fol. 243] tically the same service for the 80¢ local rate as they perform under the 83½¢ shipside rate. The port concentrator does not use any indirect service; his business is based upon getting his cotton from the point at which he finds it to the port by the most direct and quickest route, and he has no use whatever for indirect service. All cotton (R. 712) from the state of Texas, going through the ports must pass through Houston and through Galveston. The interior concentration is limited to a very small territory, naturally tributary to him, and in order to do any amount of concentrating business in the interior, it is necessary for each interior concentration plant to bring cotton from a territory which is not geographically tributary to

it. Therefore, at every interior concentration plant, there is a substantial amount of the territory from which it draws cotton which involves indirect and unnecessary service on the part of the railroads. This exhibit illustrates the extent to which the railroads are performing and must perform indirect and out of line service, which, so far as we are concerned, is unnecessary (R. 713). It would be performed whether the bill of lading was a through export bill of lading, or a local bill of lading. This service, including the backhaul, is performed alike for cotton that moves to port on local intra-state, and on through interstate bill of lading (R. 714). I wish to correct my testimony. I understood the question to be whether there would be any difference whether the bill of lading was a through export or export bill of lading to the port. I will answer that question in the negative. The services detailed in this exhibit, and published in the tariffs of the carriers are confined, with one exception, to the traffic destined to interstate or foreign ports. The rules would not be applicable on a shipment that moved to the port as an intra-state shipment (R. 715).

(The exhibit was objected to on the grounds that it was extraneous to this proceeding, and was admitted in evidence with the following statement by Examiner Keeler: [fol. 244] This Exhibit will be received for what it is worth, but there is considerable doubt in my mind as to whether or not this matter of interior concentrators, or interior merchants, versus port merchants is involved in this case, and it is understood that that question is to be finally determined. Personally I do not think the scope of investigation contemplated that, but we will let it go in and it will be for the two commissions to determine whether it is an issue.)

The last four pages of the Exhibit are not taken from the railroad tariff. Pages 29 to 32 inclusive portray the situation with respect to indirect and extra service performed in the concentration of cotton at Dallas. It is taken from a pamphlet issued by Mr. West of the Dallas Cotton Exchange (R. 720).

On page 6, Item 140 of the Santa Fe Publication, which covers this service, provides that cotton coming from Pendleton, Texas, may be concentrated at Cleburne, and re-

shipped to Houston or Galveston, and destined to interstate or foreign destination without extra charge for the additional service. The effect of that rule is while the (R. 721) distance from Pendleton to Houston via the direct line of the Santa Fe is 220 miles, the cotton is moved up to Cleburne for concentration, and then back, which means a total service of 404 miles.

The preservation of the existing difference between the local and shipside rates was the subject of a conference held among the members of the Houston Cotton Exchange. It was widely advertised (R. 722) and freely discussed. It was even the subject of a special meeting of the board of Directors and everyone who had any ideas on the subject, or any interest, was invited to be present and express his views. Anderson Clayton & Company had no representative there, nor did the Houston Compress Company. The position taken at that conference was substantially the position announced in this proceeding.

[fol. 245] The charge for the warehousing and concentration service at the various Houston Compresses is generally about 50¢ per bale. I know of no instance where it is less than 50¢ (R. 723). In some of the tariffs, the service is broken up and stated separately. I know of no instances other than in the case of the Houston Compress Company where the charge for the concentration service includes the cost of delivery to shipside.

The difference in the rate of cotton coming to ports for concentration as against the rates to shipside is not a novel situation or one that is confined to Houston and Galveston. It exists everywhere that cotton is handled at a port. Glenn's Cotton Tariff #3, I. C. C.-a 370, page 48, Items 1 and 2, show a spread of 5¢ between the rate for local delivery to presses and warehouses in the City as against the shipside rate at the following ports: (R. 724) Norfolk, Va., Wilmington, N. C., Charleston, S. C., Savannah, Ga., Brunswick, Ga., Pensacola, Fla., Jacksonville, Fla., Mobile, Ala., Gulfport, Miss., and New Orleans, Louisiana. The practice is nation wide.

Mr. Clayton: There has been shipside compresses and (R. 725) warehouses at Wilmington, N. C., for about 15 years to my knowledge. It is a very important port for cotton. I do not know that all other conditions are idea-

tical with those ports at Houston and Galveston, but you cannot regulate a matter of this sort at a port in one state without considering the effect upon other ports in competition with it. The cotton which moves to Europe through Wilmington, N. C., comes just as much in competition in those markets with the cotton which moves through Houston and Galveston. Arkansas cotton moves through the south Atlantic ports, and some Oklahoma cotton does (R. 726). No Texas cotton that I know of does. That does not change the fact that the cotton which moves through South Atlantic Ports comes in competition with the Texas crop.

[fol. 246] The Witness: There is a uniform difference at all of these ports between export and domestic rates, of 5¢. The export rate is higher than the domestic rate. The Glenn Tariff applies on cotton from practically all territory east of the Mississippi River (R. 727). This item provides that 5¢ will make delivery at the south Atlantic ports. The wharfage charges are added at Galveston, making 5½¢ (R. 728).

Cross-examination:

Houston is a concentrating point for cotton, from the shippers' viewpoint, but we do not do that concentrating under railroad rules; we pay for it ourselves. We draw cotton from various points in Texas, Oklahoma and Arkansas, take it into our warehouses, compress it there, and afterwards reship it to points in southeastern states or New Orleans to a small extent (R. 729). That is done under the Transit Tariff. The concentrating arrangements in the interior of Texas and at Houston have been in effect as long as I can remember; they were in effect when I went into the business, and are today. We attacked the same situation in the proceeding before the Texas Railroad Commission on September 4th of this year; prior to that I do not know of any proceeding attacking those arrangements (R. 730). They are available to anybody. I think I am fairly familiar with the switching charges authorized by the Railroad Commission of Texas applying at Houston. The maximum switching charge on intra-state traffic is $3.45, I think the minimum is about $2.00; it may be $1.80. The charge of the I. & G. N. Railroad for intra-state switching is $8.10 a car (R. 731). The charge of the Southern

Pacific Railroad switching to Clinton on intra-state traffic is $8.10 per car. There is a completely different character of service involved in inbound hauls on the $1.80 charge from that performed on the $8.10 rate. The $8.10 is in fact a freight rate; the $1.80 charge is a sort of reciprocal arrangement between the railroads. Railroad A switches a car for Railroad B and charges $1.80. Next day the process is reversed and *and* railroad B charges Railroad A [fol. 247] $1.80. In the course of the year it probably evens up (R. 732). Switching rates are not made with any regard for destination. They are a crude method for getting a shipment from one place to another, which perhaps are not entirely equitable to everybody at all times, but they present the same inconsistencies in hundreds of situations as is this situation of the Clinton Press vs. the Press which involves a switching of one mile. At present the 80¢ Texas Common Point rate applies alike to all warehouses in Houston, whether they are one mile from the railroad connection or ten miles. It cost the concentrator at Houston 10¢ per bale to truck a load of cotton onto the dray at Houston (R. 733). We have taken up with the carriers the question of changing the drayage absorption at Houston, but it has not been acted on. The interstate transit concentration arrangements in Texas are substantially the same as those prescribed by the Railroad Commission of Texas for application on intrastate traffic. It is true that the shipside and local rates were the same from 1891 to 1917, with the single exception of the period in 1910 when the Railroad Commission reduced local rates and the Railroads for a short period, declined to apply those local rates to the shipside.

During that period, there was no cotton exported at Houston, and the situation so far as I know at Galveston was satisfactory. The objections I gave to the suggestion were all made to the Houston situation. It might be that the plan would work at Galveston. The first export cotton went out of Houston in the Fall of 1919. Houston was never a cotton (R. 735) export port where cotton could reach the ship without the intervention of the railroads, until the Fall of 1919.

[fol. 248] We are advocating the propriety of the assessment of a charge for initial concentration. The service of

concentration entails expense to the railroad and is of value to the shipper and should be paid for by the concentrator. The plane of the rates being out of this discussion I could not make and do not make any suggestion about how that should be arranged. I do not make any suggestion about how that should be arranged. (R. 736.)

Mr. Giessow: In other words I take your position is that the plane of the rates including the privilege of first concentration should be higher than the plane of the rates without concentration?

Mr. West: It seems to me like that we are getting back into the situation that has been eliminated.

Com. Gilmore: Yes, I think so.

Mr. West: By the ruling of the Examiner as I understand it.

Mr. Giessow: He is talking about the measure.

Exam. Keeler: You are getting pretty dangerously close to the amount of the charge.

The present plane of the rates was made with the expectation that it would involve the service of concentration (R. 737) always, whereas a change has taken place since the original rates were made, and now those rates when used by the port concentrator do not include the service of interior concentration, and for that reason I regard the present plane of rates as being certainly high enough on intrastate cotton.

I have no information about the amount of refunds that are actually made for drayage at Galveston. (R. 738.) Item 65C, Supplement 16, to Texas Lines Tariff #29-A, Fonda's I. C. C. #79, states that the carriers will make an allowance not to exceed 13¢ per bale at Houston and 22¢ [fol. 249] per bale at Galveston. The rule may be read to mean not to exceed 13¢ at Houston and a full 22¢ at Galveston. That is a question of construction. Of the 719,000 bales handled by the port of Houston last year, the drays handled perhaps 75,000 bales from warehouse to the ship, the barge about 100,000 bales, and the rest was all switched. Those estimates are guesses. Before the switching line could raise their rates for switching cotton in Houston, it would be necessary to get permission from the Texas Railroad Commission. (R. 740.) My statement that if the

ports were given a second free concentration privilege, this privilege must also be given to the up-state concentration point is merely an expression of opinion; it seems natural that they would want it. Houston is both an interior point and a port; the ports have privileges such as demurrage which the interior points do not have. Interior points have privileges by way of indirect routing which the port concentration points do not have. It is my opinion, based upon experience, that the interior points would demand the same concentration privilege. As a matter of equity it seems to me that they must—that that must invariably follow. When we bring cotton to Houston which has been concentrated in the interior, and put it in our warehouse in Houston, and subsequently move it by railroad from those warehouses to the dock, we do not pay anything to the railroad for that concentration; that is because the railroad performs no service, but we do pay for the second concentration because we have the cost of delivery from the concentrating point to the ship. (R. 743.) When cotton concentrated in the interior is then concentrated again at Houston and reshipped by rail to some other part of the [fol. 250] United States, the second concentration charge is required by the tariff and we pay it. We do not have a large surplus of expense bills in Houston by reason of the movement by ship; as soon as the ship leaves the port, the railroad calls on the shipper who has sent cotton on that vessle and cancels the equivalent amount of billing. The tariff gives the shipper the privilege of substituting one bale for another, and he may not pay a second concentration on that particular bale, although (R. 744) it may have been a second concentration bale, because he has paid the tariff and has been given the privilege of substitution. The shippers of Houston and the railroads of Houston have an agreement which provides that all shippers will keep their billings in date order, and that as soon as the ship sails the inspection bureau has the privilege of coming to the shippers' Office and cancelling billing, starting with the oldest. This Bureau also checks all concentration claims, and can, and no doubt does, check any attempt on the part of the shipper to select expense bills which will enable him to avoid payment of a second concentration charge on cotton moving out of Houston via rail. I do not personally handle

concentration claims, but I know that the tariff gives us, as well as Galveston and New Orleans, the privilege of substituting one bale for another, and that the principle is well recognized in the cotton business—that the identity of a bale of cotton need not be followed. It is a uniform provision available at Dallas and every other concentration point. If, by the operation of that rule, a shipper avoids paying a second concentration I think he is entitled to do so. [fol. 251] The long time on demurrage for export cotton is a facility which is preserved exclusively for the interior shipper, is used only by him, and redounds to his benefit and not to the benefit of the port concentrator. A port concentrator cannot avail himself of it. (R. 747.) On cotton moving to Galveston or Houston under the export rates, the rate of 83½¢ does not include the wharfage, which is 2¢ per 100 lbs; that means that on through export shipments going through Galveston, the rate paid is actually 85½¢. I believe that it is correct that on a shipment going through one of the south Atlantic ports, say Savannah, assuming that the rate to the port is 40¢, the through rate would be made up by adding thereto the wharfage charge and, if the cotton [fol. 252] is handled by the railroad company, a handling charge. But, at the south Atlantic ports where the local rate if 40¢ to the depot or to the compress or warehouse, the shipside rate (R. 748) is made, so far as my knowledge, by the addition of an arbitrary of 5¢ which is specifically provided for in the tariff. It may be that 4¢ is the wharfage and 1¢ is the handling charge; the tariff provides that 5¢ puts the cotton to actual shipside. As to how that 5¢ is divided between wharfage and other elements that come up, I am not informed.

In a recent proceeding before the Texas Railroad Commission, the question of the average haul on cotton from Texas Common Points to Galveston, became important, and we made a very extensive computation, and found the average haul (R. 749) was 317 miles. It is a fact that the difference between the maximum distance which cotton may be handled under the blanket common point rate, and the minimum distance may very frequently exceed the out of line haul which could be performed in connection with the inter-state rate. The wharfage at Houston is 1½¢. The shipside rate of 83½¢ at both places includes all the hand-

ling charge to shipside, leaving only the wharfage to be accounted for. The Galveston Wharf Company would handle the cotton at Galveston for the Railroad.

WITNESS R. V. GILLESPIE

I am Traffic Manager of the Weatherford Crump & Company, Houston. Our position has not changed from our position in Docket 13,991, but we feel that there are other issues involved in this case. In Docket 13,991, we were contending against the discrimination against cotton which had been merchandised in the interior, and shipped direct to the port (R. 751) as an export shipment on which we made the contention that the city delivery rate of 80¢ had been as- [fol. 253] sessed, while at the same time we were being charge- 83½¢ for the identical service. The issue has been broadened some in this case, and we want to adopt part of our testimony in this case, the testimony of Mr. Clayton and Mr. Dalzell. We were shipping cotton to the facilities of the Shipside Density Compress at Galveston on the wharves, and that cotton was prepared to be exported and could be exported as it was without anything further being done to it, and we paid the 83½¢ rate. Some of it was high-densitied at that point. Other cotton moving in that condition, which was already merchandised in lots, so that it was in condition to move right on out, and upon which space had been reserved, was in fact, export cotton and should have been assessed the same rate, but was assessed the 80¢ rate.

My Exhibit A-14 is a photograph of the standard packages in which cotton is shipped. The high density compress of the Turning Basin Compress Company at Houston was put in operation about the first of September, 1921 (R. 753). The stockholders of Weatherford Crump & Co., are the stockholders of the Turning Basin Compress Company, and own every dollar of the stock. The Compress Co., performs compress service for anyone who wishes to avail himself of it; I think there are three other cotton firms who handle their business through the Turning Basin Compress. All of our cotton is handled on a concentration basis (R. 754). We felt there was more revenue to be derived from that class of cotton.

Exhibit A-15 shows the method of handling concentrated cotton. On page 1, we have shown on range 900 bales of cotton; this represents the first opportunity that the buyer of this cotton has to inspect shipment. It has either been unloaded from the cars and placed on the platform, where it is stacked and graded. The Exhibit refers to the handling of cotton through the Turning Basin Compress by Weatherford Crump & Company, which I understand is the method generally employed (R. 755). We have shown in colors the different cars of cotton. This represents 17 cars of cotton moving in from 17 points of origin. This Exhibit does not show actual shipment, but is intended to represent [fol. 254] the principle involved. These bales are numbered from 1 to 900, according to the system we follow and we can, at all times, identify any particular bale of cotton; we can take any shipment of outbound cotton and tell you where every bale of that cotton originated, or we can take any shipment of inbound cotton and tell you where every bale of that cotton moved to on final destination (R. 756). Under each column is shown the number of bales received in the car designated above that column, and the inbound marks, and the date of receipt. Next, is the car number and initial, the carrier handling the shipment into Houston, and the point of origin. The different colors represent different grades of cotton, which have not been ascertained by us at the time the cars are received in Houston (R. 757). It is necessary for us to ascertain those grades by taking samples of those bales after they are received. On the next page we have taken the same 900 bales of cotton and blocked it back in the warehouse in storage in even running grades and staples, showing the number of bales of each class of cotton received from the individual inbound movement as shown on the front page, we numbered those cars from 1 to 17. In the first column we have three bales of cotton showing that they were received from car #1. By referring to page 1, you will find that those three bales of cotton came from Cameron. We do not actually put a tag on the bale showing what car it came in on. I will submit later a record of an actual shipment handled which will show that we received 9 bales of this particular grade of cotton out of car #2, and so on until we have finally taken care of the entire 900 bales of

cotton (R. 758). As a matter of actual practice, a compartment may have in it cotton that comes out of hundreds of cars; I used this 900 bales as I thought it a fair sample as representing about one day's receipt at the Turning Basin Compress. On page 3, we have shipped this 900 bales of cotton to various destinations, still following out the individual bales by their tag numbers. It is not uniform to ship cotton in 50 bale lots; generally speaking it moves in 100 bale lots. I use 50 bales in this instance in [fol. 255] order to distribute the cotton over a large territory to show the method in which it is handled. I used 100 bales outbound. In the first column we have a shipment of 50 bales moving to Greenville, S. C. The first bale is #15, and by referring to sheet #1, we see that it came in from Cameron. Going down the line, we find under that bale #100, which came in from Victoria, another section of the state entirely (R. 759). On sheet #1 we find bale #15, and below it, bale #16, which also came from Cameron, and we find that it went to Liverpool by Savannah, and that the cotton as far as the carrier is concerned absolutely loses its identity. You could not consider this 47 bales of cotton from Cameron as being in a through movement to any particular place, because their records absolutely show that it went to 18 different destinations. You will find some cotton here that was moved to Bonham, and our records wil show that we have brought cotton into Houston, concentrated it, and shipped it back to Texas Mills. I will admit that that is not the general practice, but at times we do it (R. 760). It is impossible to tell when you ship that cotton in whether it is inter-state or intra-state after it moved into our plant. When it moves into our plant on a local bill of lading, we have no way of knowing whether it is intra-state or inter-state (R. 761). Greenville is a southe-st milling point. There are about 20 mills in Texas that consume cotton (R. 762). It might be possible that some of this cotton would move out in tramp steamers to coastwise points. I do not recall any independent line handling coastwise traffic to where there is no through rate published except possibly to Pacific Coast. We have not shipped any cotton by the Mallory Line direct to Boston. I would not say that they do or do not do it. There is no reason why tramp steamers should not engage in handling this cotton. We have loaded

cotton at New Orleans which was handled in that manner.

My Exhibit A-16 shows the actual shipment of 25 bales of cotton from Elgin, Texas, coming into Houston, showing on the left hand column the compress tag numbers of cotton moving into the Turning Basin Compress Company; all [fol. 256] cotton moving into the Turning Basin Compress Company is tagged, and we can follow any individual bale. On the right side, we show a recap of the various grades, showing in that 25 bales of cotton that there were six different grades of cotton received. Below we show the outbound movement, giving Weatherford Crump & Co. order number, Turning Basin Compress Company's order number, the outbound mark, number of bales of cotton covered by the order, which in each instance was 100 bales, and the number of bales received on this particular shipment we were to apply on those particular orders; this shipment was received at the press on April 13th, 1922. The first (R. 765) bale of that cotton did not move from Houston until April 25th, about twelve days later, moving to Greenville, S. C., only three bales. Next there are three different shipments going to Kobi, Japan, two bales on the 26th, and on the first of May two shipments to Kobi, different orders, different shipments, perhaps consigned to different consignees. Following the shipment throughout, we find that we moved this 25 bales of cotton out in eight different shipments. The last bale moving out on May 30th. It would have been impossible to go out to Elgin and buy this 25 bales of cotton, figuring that we were going to ship it to these particular points. The lower part of this page has been worked out and added on. The top of this sheet, showing the class, marks and the recap, is a copy of the weight sheet that comes to our office. We can take any order that is given to ship 100 bales of cotton, and turn it over on the back and see the tag numbers of every bale that was applied on that order, and then you can refer back to these sheets and get the actual origin. It is very expensive to do that, and I would not say that it is practical. We keep it for our own convenience, but we do not trace them [fol. 257] back. We use it occasionally on boll weevilly cotton, but it is not used to any extent; we have always maintained such a record (R. 767). They can at all times tell from the records where the bale of cotton came from,

its grade, date of receipt, date of its shipment and destination.

Exhibit A-17 is practically the same as Exhibit A-16 except that in this instance, we had only 24 bales that went [fol. 258] into 9 different grades.

Exhibit A-18 shows every bale of cotton received and forwarded by the Turning Basin Compress for the season, June 1st, 1922, to May 31st, 1923 (R. 768).

Exhibit A-19 shows the approximate percentage of Weatherford Crump & Company's cotton which was exported and the approximate percentage which was shipped otherwise. I went over the outbound records and tabulated them. While I was not careful to make an absolutely correct copy, I don't suppose any of them would vary more than 1%. The Turning Basin Compress Company has to re-handle all of its cotton to get it to the ship's tackle. Our charges at the Turning Basin Compress are a little different from those of our competitors; (R. 769). Our charge for compression has been for the last three years since the press was in operation 75¢ per bale for high density, and we charge 10¢ per bale additional for loading that cotton in cars, or 15¢ additional for delivering it to the ship, and I have wondered how we get any business when the other man has been doing it for less. That has no reference to any concentration charge. It is for high density. If we concentrate cotton, the same 15¢ is authorized. Our tariff is made up of a number of items, and that is one of the expenses a man must pay. We do not have a flat concentration charge. For the same service that is performed for the 50¢ concentration charge, I would be safe in saying that we are charging 80¢. The cotton we deliver to ship's tackle is handled twice by hand truck (R. 770). I think that is an expensive operation. I have arrived at an estimate as to that cost in this way. The compress does not run at its capacity at all times; there are some days when we have a gang that does nothing but truck cotton to shipside. We have taken those days and tabulated the cost of handling the number of bales handled by those particular gangs, and prorated the overhead expense against the number of bales handled, and charged their part of it back to this handling charge. That gives us the minimum cost, because during the light season we will have a gang of men that may stay

for an hour or two with nothing to do and work on an odd job here and there, trucking of course at all times, but not [fol. 259] delivering to shipside at all times. We found 62 days during the last two years that we could absolutely get a record on, and that record shows, (R. 771) the actual expense of delivering that cotton to shipside was 14¢ per bale.

Exhibit A-20 gives a map of the Houston switching district, showing the general location of cotton warehouses in Houston, and having in the upper right hand corner an enlarged map of the turning basin. The insert in the lower left hand corner is a reduced size rough map showing the surrounding territory (R. 773).

I have freight bills showing that the carriers are collecting the tariff charges, as shown in the tariff, from Shiner, Texas to Houston, contrary to the statement made by a witness at Houston. These freight bills cover all the cotton that we have received from Shiner this season, and it is billed compressed cotton (R. 774).

Cross-examination:

One hundred percent of the movement shown on Exhibit A-15, A-16 and A-17 out of our plant was to points beyond the borders of Texas. The Texas Commission rate, the intra-state rate, was paid on that cotton when it came into our plant. I think it was testified in Docket 13,991 that the average distance from our plant to the ship was 600 ft. (R. 775). The only purpose of these Exhibits is to show the method of handling cotton at the concentrating plant. I adopt the testimony of Mr. Dalzell and Mr. Clayton, which fully explains our position as to the rates. Whether the 14¢ per bale cost that is stated in the record includes the trucking from our compress to the wharves of the municipal terminal depends on where the cotton was picked up when they started to the wharves. The cotton may not [fol. 260] have been in the compress. It might have been in storage, it may have been in the north end of Shed A, it may have been compressed on arrival and blocked back in even running grades and staples and may have been picked up in one of the sheds. A whole lot of our cotton moves out of storage to shipside without recompression.

Every bale of our cotton as it comes in, is compressed on arrival to high density. No high density cotton is shipped to American Mills; we also introduce an Exhibit that shows 85% of our cotton was exported. We shipped 200 bales of high density cotton to southeastern mills, and that cotton was rejected and we had to re-ship the cotton to Savannah and export that. We have handled no cotton through the [fol. 261] port of New York for (R. 778) export. Sixty percent of our export business through the port of Houston is delivered over piers 7 and 8, which are not adjacent to our facilities. We barge and switch a considerable amount of cotton to the southside to make delivery. Sixty percent is the only cotton handled by hand truck at our plant. Wetherford Crump & Company bears the expense of movement on the cotton that moves over other facilities than the piers adjacent to our plant, if Wetherford Crump & Company owns the cotton. There is nothing in the charges that we make there for concentration, or for compression, that would carry that cotton out (R. 779). We merchandise 100% of the cotton we handle at Houston, and it is our position that because that cotton is merchandised it is proper to apply the intra-state rate. On the 35% of export cotton shown on Exhibit A-19, which we moved through Galveston, we were required to pay the export rate of 83½¢; on some of that cotton you might not say we were required, on some of it we insisted on the export rate because we feel that is the only rate to apply. We handled some of this cotton through the High Density Compress; I do not say that we handled this particular cotton.

In suggesting a one rate plan in our brief, in Docket 13,991, we were considering only the information that we had before us in the record. We feel that there has been sufficient information introduced into this record that would absolutely make the one rate plan impracticable, and we wish to have that part of our brief entirely ignored, as the record at that time was not as complete as it is now. As long as you have one rate to Houston, the plant should take the same rate, regardless of where the plant is located, and regardless of any additional service to one over the other.

[fol. 262] WITNESS J. L. WEST RECALLED

Mr. McCord's statement that his examination of the refund of 22¢ a bale for drayage at Galveston covered only a comparatively few claims and that in all cases he found the full amount of 22¢ had been refunded, reminded me of information which reached me from my members that they did not trouble to make a claim for 22¢ because the difference in what they would recover would be only a small amount, 2¢ or 3¢ or 4¢ a bale, because when a claim for refund of drayage is presented, the railroad applies the shipside rate. When cotton comes in, it pays 80¢. If they put in a claim for a refund of 22¢ or for whatever the drayage may be, the railroad necessarily applies the shipside rate of 83½¢, or 3½¢ more, so that all they would recover would be whatever drayage they had paid in excess of 83½¢ (R. 783) per 100 lbs. or 18¢ per bale. I do not know the number of bales, because I have not had access to our members records to that extent, but I do know that in the course of our business day by day, we have heard frequently of the fact that our members did not present claims for any refund in drayage, due to the smallness of the amount and to their general disinclination to work. The only object in presenting a claim for drayage would be to get the maximum of 22¢ (R. 784). I think it is fair to assume that the claims that are presented would be for 22¢ rather than for 18¢. I think the only way to get at the real situation is to go through the whole record and find out how many bales of cotton were moved on which claims might have been presented, but were not (R. 785). The 22¢ rate of refund, was originally 13¢ years ago, and has been changed by increases ordered by the Director General and allowed by the Interstate Commerce Commission so that it is a fictitious figure. I suggested to the railroads a year ago that this was an improper figure and that the maximum amount should be 18¢. I prefer to see it on the proper basis, but for some reason nothing has been done. If Mr. Fulbright merely wants to ascertain whether some shipper is paying 18¢ a bale for drayage and in getting back 22¢ [fol. 263] per bale, I will join him, for I think that should be stopped quickly. I cannot imagine its being done except inadvertently (R. 786).

WITNESS HORACE BOOTH RECALLED

At the time the 22¢ per bale drayage (R. 787) allowance was published, the carriers were furnished evidence showing that that represented the cost of the service. We have no information that the drayage cost has been reduced since that time. It has been shown by the testimony of Galveston shippers in this case that the service is being actually performed at 18¢. It will be the purpose of the carrier to amend that item in the tariff so as to provide for a drayage allowance not to exceed the actual cost of the service. My road has been called upon to refund these charges in compliance with this paragraph; in many cases we have been presented with a claim for drayage for 22¢ per bale, supported by a bill for drayage in that amount; but I do not understand that the practice has been to require that the particular shipper presenting the bill shall support his claim by a receipt which is given to him by the drayage company. I agree with Mr. McCord's interpretation of that tariff insofar as he referred to the drayage bill as the drayage bill of shipper to the railroad lines as distinguished from the receipts of the drayman to shipper. In many cases a drayage is performed by the shipper himself, by his own facilities (R. 789).

Narrative of the Proceedings in Interstate Commerce Commission Docket #14940, Application of Rates on Cotton to the Gulf Ports, and Docket #13991, Wetherford Crump & Company, Complainants, vs. Abilene and Southern [fol. 264] **Railway Company et al., Defendants, at New Orleans, Louisiana, October 29, 1923**

WITNESS CARL GIESSOW

I am General Manager of the New Orleans Joint Traffic Bureau, a voluntary organization of various civic and com- [fol. 265] mercial bodies in the City of New Orleans, embracing the New Orleans Cotton Exchange and the Board of Commissioners of the part of New Orleans. I have been

connected with the New Orleans joint Traffic Bureau in an official capacity since July 1st, 1917; I have been General Manager since March, 1919. Prior to 1917, I had approximately eleven years (R. 795) of experience in traffic work, being connected with one of the Southwestern Lines, the St. Louis & San Francisco Railroad at St. Louis. I was Chief Clerk in the Freight Traffic Department with that Railroad for four years, prior to June 30, 1917. The New Orleans Joint Traffic Bureau is one of the parties joining in the request upon the Interstate Commerce Commission for this investigation. We feel that there is nothing improper in the application of the rate as now applied at New Orleans, where a two rate plan is operated in much the same manner as at the Texas ports, one on local or depot delivered cotton, and another on shipside or export cotton. The rates applicable to shipside on export cotton is generally higher by slightly varying amounts, than the rates applicable to local or depot delivery. One notable exception is with respect to rates on shipments for export from points in the northeastern portion of the State of Texas, from which territory the rates to New Orleans for export are considerably below the rates applicable for local or depot (R. 796) delivery. To illustrate, the rate for local or depot delivery as I recall it, is 96¢ per 100 lbs., while the rate for shipside delivery is 85½¢ per 100 lbs., the latter rate being published under the so-called port equalization scheme, and designed to place the port of New Orleans shipside on a parity with the port of Galveston shipside. The scheme of rates has had the approval of the Interstate Commerce Commission under I. & S. Docket 65, 65-A and 65-B, 23 I. C. C.

My Exhibit A-21, is a map of the port of New Orleans, showing the location as indicated in red, of the various compresses and cotton warehouses located in the port of [fol. 266] New Orleans. The land area on the map does not include the New Orleans Compress Company; its location is indicated by an arrow pointing to the left at the extreme upper left hand corner of the map. I judge that the distance between the extreme left hand border of the map at which the plant is located is about two (R. 797) miles. It may be slightly more or slightly less. The map shows that all of the facilities at New Orleans with the

possible exception of the facility of the public cotton warehouse are clearly what has been designated in this proceeding as up-town compresses or facilities. We believe that the public Cotton Warehouse is also an up-town facility but because there is a wharf adjacent to the compress and warehouse proper, I have excepted it in order to explain the situation; its exact location with reference to the wharf will be further indicated in another exhibit. The Pelican Press is not located adjacent to a wharf. It is the closest of the up-town compresses to a wharf, but the street and a number of railroads' tracks intervene, and in the application of charges, and in every other matter the Pelican Press is strictly an up-town compress.

My exhibit A-22 is a statement showing the storage capacity of bales of cotton at compress warehouses and railroad (R. 798) terminals in New Orleans. The total capacity of the cotton compresses is shown as being 532,500 bales, and of the railroad facilities 158,000 bales, aggregating 690,500 bales for both.

My Exhibit A-23 is a statement showing the cotton compresses and warehouses in New Orleans, their storage capacity in bales, and the facilities at such compresses and warehouses for compression. It shows that there are eight high density compresses at the port which I understand can also compress to standard density, and two strictly standard density compresses. One facility, the Louisiana, has no compress. None of the Railroad terminals indicated on Exhibit A-22 are provided with compresses.

My Exhibit A-24 is a statement showing the ownership of the cotton compresses located in the City of New Or- [fol. 267] leans (R. 799). The new planters' compress and the Commercial Compress are not located on railroad tracks, and shipments inward or outward are handled by drays, floats or trucks. By trucks I refer to trucks other than hand trucks.

My exhibit A-25 is a statement showing the location of high density compresses in the southwestern states of Arkansas, Oklahoma, Louisiana, and Texas.

My Exhibit A-26 is a statement showing the cost per bale of compressing various classes of cotton at the points shown. We were unable to get informatoin as to the charges for the various densities of compression at all

points (R. 800). "Cost per bale of 500 lbs. compressing" means a charge for compressing as made by the compress, and not the cost of rendering the service.

My Exhibit A-27 is a statement showing the switching charges at New Orleans from the various compresses located on railroad facilities to three representative wharves or docks on the city front at New Orleans. The docks were selected as representing three different points of delivery. The "City Front" is intended to indicate the facilities that are administered by the Board of Commissioners of the port of New Orleans. The facilities are owned by the state of Louisiana, and operated by the Board of Commissioners. In addition, there are also railroad facilities (R. 801), those of the Illinois Central Railroad, known as the Stuyvesant Docks, located between the public cotton warehouse and the Robbin St. Wharf. This is to show that the wharves selected for this Exhibit are fairly representative. The Exhibit shows that the charge to each is the same, and it is fair to say that the cost of making delivery from those different compresses to the City Front facilities is the same. When cotton is handled outward from the compress to any of the city front wharves by switch movement, there are certain additional charges in addition to the switching charges, which that cotton incurs, for example, where the compress does not earn *compress does* [fol. 268] *not earn* compression, there is an outward loading charge into the cars of 10¢ per bale; there is also an unloading charge at the docks of 6¢ per bale, and a tollage charge of ¾¢ per 100 lbs. Based on a 500 lb. bale, the aggregate of those additional charges is 3.95¢ per 100 lbs. (R. 802). The Pelican and Crescent City Presses are located on the Illinois Central and the Gulf Coast Lines, the latter using the terminals of the Illinois Central Railroad. I do not show the switching from the Pelican or Crescent City Compress to the Illinois Central Terminal. It is possible that they could make such delivery, but I understand that it is not generally done. From the City Front Compresses, there is in normal times but a very, very small movement by switch. I understand that the vessels come to the Illinois Central Docks and get quite a lot of cotton there; however, it mostly moves on through export bills of lading from the interior.

My Exhibit A-28 is a statement showing comparison of rates to New Orleans, Houston and Galveston, from representative points in the southwestern states of Oklahoma, Arkansas, Louisiana, and Texas for depot and shipside delivery for export. Its purpose is to show the difference between depot delivery and shipside rates at these various ports from representative Southwestern points of origin (R. 803). A competitive feature is involved in two cases now pending before the Interstate Commerce Commission, namely I. & S. Docket 1858, and I. C. C. Docket 15,083, and Sub. #1.

My exhibit A-29 is a statement showing receipts and disposition of cotton at New Orleans for the season August 1st, 1922, to July 31st, 1923. This covers receipts from all sources and includes cotton moving into warehouses, and also cotton moving through without stopping at the Port. It shows that 1,453,892 bales were received. That there was an export movement by vessel from the port of 814,017 bales, or 54 and 8/10 per cent of the total. There was a coastwise movement of 312,446 bales, or 21.6 per cent of the total movement. There was a movement by rail to northern mills of 2,716 bales, or 1/10 of one per cent. There was a movement by rail to southern mills of 308,156 bales, or 20.7%. There was a local consumption of 43,632 [fol. 269] bales or 2%. The total outward movement was 1,480,967 bales, an amount slightly in excess of the receipts. That excess was taken from stock that was on hand at the beginning of the year (R. 804).

The one rate plan which has been suggested to correct alleged discriminations between water front and up-town compresses at other ports, contemplates, I understand, that where cotton is concentrated at the port, the outward movement from the so-called up-town compresses to shipside would be made under the shipside rate without additional charge in the way of penalty for second concentration. We are not in favor of a single rate scheme. The two rate plan in our opinion, is the logical plan, and a just plan. The higher rate to shipside should, and does, in a general way, represent the approximate added cost of delivery to shipside. The propriety of such a plan has been recognized by the Commission in previous cases, specifically I. & S. Docket 955, 46 I. C. C. 451, and I. C. C. Docket 11,965,

77 I. C. C. 388. These two cases relate to rates on cotton from designated points in the southwestern states, but it is not restricted to southwestern states. The rate from the southeastern territory, being the territory lying east of the Mississippi river, is a two rate basis, and is uniformly applied at all south Atlantic ports and Gulf ports, New Orleans and east. That basis is not applied from Oklahoma to New Orleans, but it should be under the language of the Commission in Docket 11,965. The Commission stated on page 413 of 77 I. C. C.: "It is obvious that a uniform basis for fixing export rates upon cotton from the Southwest to New Orleans and the Texas ports should be established, and that export rates which exceed the domes- [fol. 270] tic rates by the amount of the charge for moving the cotton from the rail terminus to ship side are not only reasonable and proper but are necessary to avoid the discrimination pointed out in Louisiana Cotton, Supra." In regard to the two rate plan as applicable to the South Atlantic and Gulf Port, New Orleans and east, from southeastern territory, the rates are published in Glenn's Ports Cotton Tariffs, #3, I. C. C. A-370. Note 1 of that tariff, page 48, specifically states "Rates named in this tariff will not include delivery to shipside." (R. 806) The specific figures in the tariff are the rates for local or depot delivery." Note B on the same page is captioned "Rates for export to Shipside." That note provides that when for export and to apply only as proportion of through export rate and export bills of lading showing through rates to foreign destinations, rates will be 5¢ per 100 lbs. higher than to the port proper. The 5¢ is exactly equal to the combined charge for wharfage and handling at the South Atlantic and Gulf Ports east of New Orleans as covered [fol. 271] by Agent J. H. Glenn's Port Charges Tariffs #4, I. C. C. A-439 which is, however, not the current tariff. It is to become effective November 24th, 1923. The current Tariff, Glenn's Port Charges Tariff #3, I. C. C. 382, provides for the same charges. The first named tariff under item 110 specifies wharfage charges, including 10 days storage of 5¢ per bale, which reduced to cents per 100 lbs. on the basis of 500 pounds per bale, is 1¢. The same item reflects a handling charge either between shipside in cars, or between storage and shipside of 20¢ per bale, (R. 897),

or 4¢ per 100 lbs. The aggregate of these two charges on the basis of a 500 lb. bale is exactly 5¢, the amount added to the local rate in order to make shipside delivery rates. That 5¢ will approximately get the cotton from the compress and warehouses to shipside, but not exactly. Exhibit A-27 shows different switching charges, in addition to which there are added certain other charges. But as a practical matter there is but very slight movement by switching cars from compresses to the water front except from the New Orleans Compress Company located at Shrewsbury. I understand from that tariff that there are no further wharfage or handling charges applied on cotton which moves out for export where the carrier performs the service. (R. 808). That difference between the export and the domestic rate merely reflects the wharfage and handling charges as designated by the tariff. That means movement from cars to shipside, and movement from storage to shipside. As a practical matter, I understand that cotton is unloaded upon receipt of it by the carriers into their facilities, and that it is frequently further moved after a ship is berthed. There is no attempt in that 5¢ differential to absorb the cost of draying from up-town warehouses. Some of these railroad facilities are immediately at shipside, and some of them are not. If a shipment moves on a through bill of lading or on an export bill of lading through the port and the vessel was docked waiting for the cargo, there would be this 5¢ charge if there were no specific rate applicable to shipside. From the southeast the specific rates applicable to shipside would be 5¢ higher than the rates for local or depot delivery (R. 809). [fol. 272] The 5¢ charge is made in addition to the rates applicable for local or depot delivery, and when made includes all expense of delivery to shipside. At New Orleans a 5¢ charge designated as handling charge and carrying no separation as between handling and wharfage, includes in its actual application, all of the same services as does the 4¢ and the 1¢ at the other South Atlantic and Gulf Ports (R. 810). On a shipment coming into New Orleans to an up-town warehouse and there merchandised and then switched to the water front property, if concentration were availed of, a rate of 5¢ per 100 lbs. higher than that applicable to the facility, would be assessed and include all delivery by the carrier. Or the shipper might avail himself

of any concentration privilege on the part of the railroad and pay whatever the actual cost was to put it to the shipside. In that case, the shipper would pay the tollage. The item covering the 5¢ handling charge at New Orleans is item 50 of Agent W. P. Emerson's Joint Demurrage and Handling Charges Tariff #1-M, I. C. C. #77. The rates on cotton to New Orleans from the southwestern states and also from the southeastern states, have largely been fixed as a result of proceedings before the Interstate Commerce Commission (R. 811).

It has been testified that a greater free time allowance is made at New Orleans than at Galveston, the allowance on domestic business being four days, and on export business 7 days on compressed cotton. Those allowances are contained in item 19 of Agent W. P. Emerson's Joint Demurrage and Handling Charges Tariff #1-M, I. C. C. 77. They are free time allowances in connection with the charge for space rental of cotton. The present charges bear the approval of the Commission. Those free time allowances do not apply on cotton held in cars (R. 813). In the prior hearing, it developed that on cotton on which the privilege of concentration is not taken, the carriers make an allowance of 1¢ per 100 pounds for unloading at Houston and Galveston; the same group of carriers serving New Orleans [fol. 273] make no such allowance, and we request at this time that this allowance should be made at New Orleans. Whether the carriers or the shippers unload at New Orleans, depends on where the unloading is ordered. At the Compresses, the expense of unloading is borne by the cotton warehouse; if cotton is unloaded when moving under a through bill of lading at the docks, the unloading is performed by the carriers, and they receive compensation under the rate for their services. The provisions covering such allowances at Houston, Galveston and Texas City are Items 142 and 145 in A. C. Fonda's Tariff #29-A. I. C. C. #79. At Houston and Galveston, the carriers also authorized in connection with the shipside rate, allowances for drayage when performed by facilities other than their own. The allowance at Houston and Galveston is (R. 814) covered by Item 65-C of the tariff just referred to, and that Houston is not to exceed 13¢ and Galveston 22¢. Only two of the carriers serving New Orleans from the West

have authorized the option of delivery by dray from the Compress in lieu of switch movement where a concentration was used, and in both cases have restricted their absorption to the maximum of 15¢ per bale. The expense of drayage at New Orleans is an economy of 25¢ per bale. The absorption at Galveston, we understand, covers the full expense of the drayage, while as to Houston there is some doubt. Certainly the full expense of drayage is not covered at New Orleans, and we would like the record to show that we are requesting that the allowance at New Orleans be increased an amount that will figure at least equal to the maximum allowance made at either of the Texas Ports. The Gulf Coast Lines and the Southern Pacific Lines are the two lines making that absorption at New Orleans. (R. 815).

Cross-examination:

At the Public Cotton Warehouse in New Orleans, there is a wharf which is somewhat further removed from the compress and storage chambers than is the case of either the Long Reach Compress at Houston or the Turning Basin Compress at Houston, or the Shipside High Density compresses at Galveston, or some of the Concentration (R. 816) Company's facilities at Galveston. I understand there is [fol. 274] no storage of cotton on the wharf for account of owners. Some cotton may be held there for account of the Steamships, but it is the property of the Steamships, having been delivered to them by placement on their wharf. The Public Cotton Warehouse has no interest in cotton whatever except as a warehouse or a storeroom. When cotton moves to uptown warehouses in New Orleans, and is there compressed at the charge of 75¢, the compress companies deliver to shipside for the 75¢ charge. (R. 817). That is not the situation at all compresses at Houston. The situation at New Orleans is a matter of recent date, beginning, to the best of knowledge, with the present cotton season, and, so far as I am advised, was compelled by competitive conditions existing at the port of Galveston. At Galveston and Houston, the carriers generally provide that they will make an allowance for drayage in connection with the export rate, whereas in New Orleans except for the two carriers I mentioned have, up to the present time, no pro-

vision has been made for the drayage allowance; and the allowance as made does not compensate for the cost, or rather for the charge for movement, which from the City Compresses in New Orleans, except the New Orleans Cotton Compress, and the Public Cotton warehouse, to City Front, other than wharf at the cotton warehouse by dray, is 25¢ per bale. That charge also applies to the wharf at the cotton warehouse from presses other than the Public Compress. (R. 818). I understand that the charge made by the draymen for the movement of the cotton from the compresses in the City, moving from the Public Cotton Warehouse, to City Front Wharves, is 85¢ per bale. The exception to that is the movement from the Public Cotton Warehouse to the wharf adjacent to it, where services are performed by facilities afforded by the warehouses themselves, and not by public draymen. The drayage charge from the New Orleans Compress Company to the city front wharves is 70¢ per bale. If the Public Cotton Warehouse does not furnish compression, the charge made for delivery of cotton to the docks adjacent is 15¢ per bale. (R. 819). That delivery is made by electric trucks. (R. 820). The compress companies at New Orleans charge 10¢ per bale for [fol. 275] delivery by truck to the drays when the shipper pays the drayage. I would assume that the 10 days free storage at the South Atlantic Ports at a wharfage charge of 1¢ per 100 pounds, would be the same as the 15 days free time allowed by the wharf company, for instance, for assembling cargo in advance of the arrival of the boat. (R. 821). I don't know what it costs a carrier to make delivery to the interior warehouses compared with the cost in making delivery to shipside on a through bill of lading. Whether the switching charges are the same would depend upon the point of delivery. As a general proposition it is not necessarily true that the switching charges are the same. The switching charges of the Public Belt is the same as that of the line haul carriers to the compress on the city front. (R. 822). I think that the switching charge assessed against a movement of cotton from the Pelican and Crescent City Compresses to the Illinois Central Docks, would probably be greater than the Public Belt charge of $6.30, shown on Exhibit A-27. It would be a one line service. All cotton rates applying to New Orleans and to Hous-

ton and Galveston from interior points, are on the any quantity basis, and the carrier is obligated to load and unload. I heard Mr. Dalzell's testimony that the drayage at Houston was in no case less than 18¢. (R. 823). It is not my contention that the carriers should in any case absorb more than the actual cost of drayage. I think the maximum absorption might reasonably be uniform; and the same maximum might apply at all three ports. New Orleans has constructed an industrial canal, one purpose of it being to afford water front facilities for private industries that may be located along its banks. I know of no reason why one of these compress companies here might not construct a warehouse facility adjacent to the industrial canal. All [fol. 276] of the warehouse facilities in my Exhibit, including the warehouses of the Public Cotton Warehouse, are used by cotton merchants for the performance of the merchandising service or concentration. They hold themselves apt to give that service to whoever desires it to the extent of their facilities (R. 824). The figures in Exhibit A-29 showing the net receipts of cotton at New Orleans for that year, were furnished to me by the Secretary of the Cotton Exchange and it was stated at that time that they included all cotton which moved through New Orleans on railroad movement without being stopped here. We have no information as to why the net figures shown by the Secretary's Report of the Port of New Orleans shows 100,000 bales less than the total shown by my report. I understand that the carriers apply the export rate on all shipments moving on local bills of lading for export which go directly to shipside. On cotton which is merchandised, the domestic rate is applied. There may be some small quantity of cotton that comes into the Public Cotton Warehouse and is there compressed to high density and is shipped out without merchandising and without change in the marks or lots (R. 826). Our thought is, that on cotton so handled, the export or higher rate should be applied, as there appears to be no question but that is export cotton. That would be cotton of the same character as Mr. McCord showed in his exhibit as moving through the High Density Compress at Galveston and the High Density Compress at Houston at the Houston Compress Company, where no service but compression to high density was performed, the cotton being already in

condition to be exported except for the reduction in the size of the bale. At New Orleans where the higher shipside [fol. 277] rate is charged on cotton moving under Glenn's Port Cotton Tariff, that additional 5¢ is what the carrier received for the service of placing it to shipside. If the shipper performs that service, he would pay the local rate and pay for the service, or else he would have to apply the shipside rate, and an absorption back of the drayage, if any absorption was allowed (R. 827), but no absorption is allowed except in the case of the Gulf Coast Lines and the Southern Pacific. If he was switching over, he could file a concentration claim on first concentrated cotton. We request to have 1¢ per 100 lbs. unloading allowed on cotton which is not concentrated, the same allowance which is made at the Texas ports. My information is that cotton is not concentrated on the warehouses adjacent to the Southern Pacific Dock, in the sense that cotton is concentrated at these other facilities. It is not stored there for the account of the shipper, except as incidental to through car- [fol. 278] riage. The facilities do not hold themselves out as warehouse men purely. When the Illinois Central makes port delivery, it discharges its cotton at the compress if there is sufficient quantity in the car, and if they have orders on hand at the time of the receipt of the cotton (R. 828). If they have no orders, they discharge it at their depot in what they designate as cotton sheds. They will deliver it from these cotton sheds to shipside at 5¢ per 100 lbs. As I understand it, Steamship Agents do not sign for cotton in the public warehouse, until the cotton is located on the wharf. On the wharf it will be within 200 feet of the ship (R. 829).

The wharfage is absorbed in addition to the allowance for drayage at Galveston. That allowance is made only where the shipside rate is applied, and the shipside rates at Galveston include 2¢ wharfage, so there you are really getting 32¢ per bale. If these two absorptions are reasonable and proper at Galveston, they should also be reasonable and proper at New Orleans, because the port is strictly in competition with the other ports, and an allowance there which is higher than New Orleans affects the movement of the cotton to the extent of the difference of the cost. The 83½¢ rate is not really a shipside rate because it does not in-

clude all of the expense of delivery to the ship there being in addition, the wharfage (R. 830). I understand it does include all expenses of delivery to the shipside on coastwise traffic at Galveston. On traffic which comes into New Orleans and moves out by coastwise steamer, where through rates are in effect, the shipments are generally handled under concentration, and the through rate includes the expense of delivery into and out of the compress. A considerable portion of that cotton is handled on joint through rates with the water line. Where it is not, if the cotton were merchandised the expense of delivery to the ship would have to be borne by the cotton, and the domestic rate would be applied.

On cotton received at New Orleans, from Shreveport, in standard density packages, and merchandised here, a rate of 70½¢ per 100 lbs. would be charged. If that cotton were [fol. 279] high densitied and moved to city front for export there would be no added payment to the carrier by the owner, the compressor undertaking under his compressing charge to assume the expense of movement from the compress to the shipside. There would, however, be paid the tollage charge of ¾¢ per 100 lbs. The cotton would bear that. On a shipment of cotton moving direct from Shreveport to New Orleans for shipside, the cotton would pay 75¢ per 100 lbs. At the present time, the tariffs of the carriers' do not authorize high density compression in transit at New Orleans. If the cotton were for high density compression, the shipper would have to pay the 75¢ charge under which he would be entitled to have his cotton moved to shipside at the expense of the compressor, and on which in addition to the compression charge, he would pay ¾¢ tollage, but he would there have paid in the first instance (R. 832), 70½¢ per 100 lbs. Since compression in transit is not authorized under the through rate, he would doubtless consign the cotton to himself in care of the compress, have it compressed and moved out. The compress would assume the expense of draying to the shipside, and the shipper paying in addition to his inbound rate, the tollage charge through the port of ¾¢. As to that cotton, there is some question as to what rate should lawfully be applied. My opinion is that the cotton having been export cotton at the time of its shipment, the character of the marks and the lots not having been changed, the only service given the cotton being that of re-

duction in the size of the package, the cotton was export cotton, and the shipside rate should be applied to it. Such cotton would take a 75¢ rate. Since the carrier would not know whether to apply that rate unless there was some notation for export or other evidence that it was to be exported, it is possible that they would apply the 70½¢ rate (R. 833). My answer is based upon what I think should legally be applied under the tariff, and not necessarily what is applied. Where cotton was concentrated and concentration claim was filed, there is no distinction between the uptown and the downtown compresses so far as the 75¢ charge covering the cost of taking the cotton from the respective compresses [fol. 280] to shipside is concerned. All compresses at New Orleans make the same charge for standard density cotton, 60¢, and for high densitied cotton, 75¢, and when the compresses earn compression, they undertake to make delivery to the city front docks out of the compression charge. They include in that compression charge the cost of delivery. It is really a compression-delivery charge (R. 835). The charges do not specify a concentration. They are separate and cover different services.

The tariffs which authorize the option of drayage in connection with delivery of concentrated shipments to shipside, under the shipside rates are Gulf Coast Lines Tariff 731-F, I. C. C. A-674, Supplement 2, Item 115, effective September 15th, 1923, and Southern Pacific Company, M. L. & T. R. R. & S. F. Co. Tariff 1499-C., I. C. C. 4474-C, Item 110, effective October 10, 1923. The citation in connection with space rental charges is Railroad Space (R. 836) rental charges on compress and uncompressed cotton at Louisiana port, 66 I. C. C. 121.

WITNESS E. H. LOCKENBERG

I am Superintendent of the Public Cotton Warehouse of the Board of Commissioners of the port of New Orleans; my duties embrace the supervision and operation of that facility. My exhibit A-30 is, to the best of my knowledge and believe, a correct representation of that facility (R. 837). The warehouse is divided into five units known as J, K, G, H, and L, and a compress room. Orders for delivery

of cotton are furnished by the shippers to the carriers direct for delivery of cotton to the public cotton warehouse. The warehouse is furnished either with standing instructions or specific instructions as to what disposition should be made of the cotton upon receipt. Storers are assigned to the various units, and immediately upon receipt of cotton at the warehouse, it is placed at its respective unit at which part it is unloaded from cars and accorded the different services that [fol. 281] consignees request, such as sampling and weighing and compressing. The cotton is either stored or reshipped or delivered to other parties in accordance with the instructions of the owner. A receiving charge of 15¢ is assessed against all cotton received at the warehouse with the exception of transit cotton, there being no receiving charge against it. After the assessment of the 15¢ charge a storage charge per day of 7 mills, seven tenths of a cent, is assessed (R. 838). That charge is 7 mills per bale per day until the cotton is taken out of storage. The warehouse allows a period of three working days on arrival without charge. The receiving charge of 15¢ a bale is taxed immediately upon arrival. That covers the services of inspecting for conditions, furnishing tags and tagging, furnishing tag sheets, showing country marks, and tag and initial warehouse receipt. It includes also ranging and unloading from cars or barges and drays. The sampling and grading is performed by the Cotton Exchange or the storer's own representative. That operation is separate and distinct from any service rendered by the warehouse (R. 839). The receiving charge places the cotton in the store room. It is stored on the side, bale on top of bale. We do not report or ascertain the grade of any cotton. We seldom ever receive a request to store cotton according to lots or grade. Our principal storage is storing the bales in one compartment in one pile. When we receive orders to further handle that cotton, they generally indicate that a certain number of bales by tag number are to go out to a certain ship (R. 840). If that cotton is not compressed by the compress, we make a charge of 25¢ a bale for delivery to the ships at all wharves served by the Public Belt. If the cotton were to be delivered to a ship at a dock adjacent to the cotton warehouse, we make a charge of 15¢ per bale for delivery. If it were to go out for line movement and we were requested

to load it in the cars, we would make a charge of 10¢ per [fol. 282] bale if we had not compressed it. If it had to be delivered to drays for movement by dray, the shipper paying the cost of drayage, we make a charge of 10¢ per bale, the same as if it were to be loaded into cars for line movement (R. 841). No charge is made for loading cotton in cars for line movement or delivery to city front wharves, or delivery to our own wharf facility, where we enjoy the compression. A charge of 10¢ per bale is made for delivery to dray even though we earn compression, because we are in position to either dray the cotton or make delivery by cars ourselves. The charge made by the New Orleans Cotton Exchange for sampling, grading, and billing, depends on the manner in which the cotton is handled; those charges are enumerated in our tariff for the information of the cotton warehouse storers, and the information shown there is accurate to the best of my knowledge. Exhibit A-31 is a copy of Public Warehouse Tariff #9 and Supplement #1, and it gives that information (R. 842).

The records of the Public Cotton Warehouse are so maintained that it could be easily determined by an Inspector of the Railroad what cotton was transit cotton as distinguished from cotton which was merchandised at the facility. We maintain separate records for each. When we perform the service of compression and make delivery to city front facilities other than at the wharf adjacent to the Public Cotton Warehouse, that delivery is made in cars via the Public Belt, or by drays. In either event the warehouse bears that expense. It does not bear the expense of the tollage charge for making such deliveries; that expense is evidently borne by the cotton (R. 843). The Steamship Company collects all storage direct from the shipper, and makes payment direct to the Board. When we elect to dray cotton instead of switching, we have the same expense as any ordinary drayman. Our records show that we can haul cotton to the city front wharves for about 20¢ per bale, with our own trucks; we do not engage draymen to perform that service, except in isolated cases. We switch cars to the docks. The cotton which moves over the wharf adjacent to the Public [fol. 283] Warehouse is handled by motor trucks and trailers (R. 844). This wharf is about 1300 feet long. We may have ships receiving in berth 6, and may have them receiving

any where along the wharf, from berth 1 to berth 6. The length of the haul from the different points of storage to the wharf, ranges from 1,000 to 4,000 feet. It is not the practice of the Public Cotton Warehouse to store cotton in the wharf house. They store only general cargoes there. The Steamship Companies accept delivery of cotton in that wharf, if they make arrangements with the Dock Board to have their boat there. Before cotton is delivered to the wharf to any boat, they must make an application for the berth for the boat (R. 845). That practice has been uniformly followed since I have been connected with the warehouse. I know of no exception since January, 1922.

Cross-examination:

The expense of trucking cotton by electric truck from the various points in the plant to the wharf house is somewhere around 7½¢ to 10¢ per bale (R. 846). That figure includes overhead expense, but not interest on the investment in facilities used in the warehouse. We have no figures on the latter; but if included, it would make the figure materially greater. Transit cotton is cotton that merely comes in the warehouse for the purpose of being compressed, and goes out in practically the same form as it is received in. It would be switched to a place convenient to the compress, run through the compress and loaded again to the car and shipped out (R. 847). If a shipper in Shreveport assembles his cotton there, compresses it, and concentrates it into even running grades, ready to go to the ship, then ships 100 bales of that cotton to our facility to be loaded to the ship, and if we know in advance that it is not going to be held in storage, we would put it on one of those warehouses, L, H or G, which is adjacent to the wharf so that the cotton would be moved out to the wharf. Unless we had instructions in advance to deliver it to the ship, we would have to put it in storage (R. 848). If the cotton comes in even running lots [fol. 284] and is in condition to be delivered to the ship, it would not have any business at the warehouse; the car would be placed adjacent to the warehouse and unloaded by the railroad company; the warehouse would not handle it at all. The wharf house would be the facility through which that cotton is handled, just as any other city front wharf. We have jurisdiction over the wharf house; we do not make a

charge to anybody for the use of the wharf house in transferring that cotton from the railroad track to the shipside; that is handled as a wharfage and as a shedage and a (R. 849) tollage fee. The wharf house is operated separate and distinct from the warehouse. I do not know whether that cotton would pay the shipside rate coming to the wharf house. Cotton that has been assembled and is ready for export and in even running grades, which comes in as standard density with instructions that we compress it to high density, and deliver it to the ship, would be unloaded convenient to the compress. It would then in like manner be moved direct to the wharfhouse if the ship was ready to receive it. There is no difficulty in keeping a separate record of that cotton from cotton that is merchandised in that facility (R. 850). Our records would show that that cotton was only served by having it compressed to high density and delivered to the ship. We handle isolated shipments of that character, but not many. The greater part of the cotton handled by us is handled for merchants who really make use of this facility for grading and concentrating their cotton. The cotton belonging to any particular merchant would generally be in one unit. In loading a ship we would simply load cotton from whatever unit the cotton for that ship would happen to be in. If our facility were larger, a longer service in getting to the ship would be involved. The 20¢ per bale cost of drayage covers only the actual cost of the operation; our drayage is confined to only short hauls (R. 851). Including the warehouse and the wharfhouse, that facility costs approximately $6,500,000.00; it is the property of the state of Louisiana. Between 20% and 21% of the cotton which is handled at *at* [fol. 285] the Public Cotton Warehouse moved over the wharf adjacent to it last season. There was nothing unusual about last season; that is a good average. All of the Steamship Lines do not call at the wharf adjacent to the Public Cotton Warehouse; the lines that operate regularly on that wharf to known countries to which cotton moves are the Tampa Inter-Ocean, the Straughn Shipping Company, the Isthmian and Norton Lilly and Company. Norton Lilly does not have assigned berths, but invariably coming in with inbound cargoes justifies them taking outbound cargoes. The Dock Board has a rule requiring

Steamship companies to shift berths for 500 bales, but as the rule works a hardship on many Steamship Companies it has never been rigidly enforced. They do or do not, according to their convenience. The present basis for charges for everything on which the compress undertakes to make delivery to shipside, exclusive of tollage charge, is of rather recent date (R. 853). The practice was inaugurated to meet competitive conditions existing principally at Gulf Ports, mainly at Galveston. I did not know that the practice was in force at Houston. The wharfhouse is 180 ft. wide; there is an apron of about 150 feet, and that would make it about 150 feet from the edge of the apron to the edge of the farthest part of the wharf. The Steamship Agents sign for the cotton in that warehouse. In former years they did store some cotton in the warehouses when they had an accumulation (R. 854). There is a first and a second story; the Steamship Agents sign for the cotton upstairs, and they bear the expense of putting it aboard ship. The wharfhouse is about 1,300 feet long. The fact that only 20% of the cotton handled through the warehouse last year, was delivered direct to the wharf adjacent to the warehouse, was not due to the fact that it was moved all rail to the southeast or somewhere else. Lots of cotton was delivered at City Front Wharves. Usually we send cotton to the Southern Pacific Steamship Lines in cars; some small lots we dray (R. 855). We handle some standard compressed cotton to shipside from our wharf facilities and charge 25¢ per bale for it, where we do not earn the compression. When we deliver it to our wharf adja- [fol. 286] cent to the warehouse, we charge 25¢ per bale if we do not compress it. The boats will call at this warehouse when they have a sufficient number of bales of cotton to justify them in calling, 500 bales and over. Some of the berths are regularly assigned and naturally they will take whatever they get, it might be only 100 bales (R. 856). This wharfhouse is operated in exactly the same manner as all other wharf facilities that have covered sheds, by the Board of Commissioners; it has the same charges and the same rules and regulations. The only difference is that it is double decked. We compress about 60% of our receipts; that includes the flat and the standard. About 40% of the cotton that moves through this

warehouse moves for export, standard compressed bales. My previous experience at handling cotton was on the railroad. I have only been with the warehouse since 1922 (R. 857).

WITNESS RALSTON F. GREEN

I have been for the past four years, Superintendent of the Union Compress Company, Inc., the sotck of which is owned almost exclusively by the firm of Harriss, Irby & Vose, and for three years prior to that I was connected with the Public Cotton Warehouse as a clerk in charge of one of the sections. The Union Compress Company is one of the so-called City Compresses, and is representative of the other so-called City Compresses; the same schedules of charges operate at those Compresses (R. 861). The firm of Harriss, Irby & Vose are cotton exporters; they are the principal customers of the Union Compress Company. We also handle other accounts, any other we can get. That is generally true of all the City Compresses. I have seen Exhibit A-15 of Mr. Gillespie's which details the manner of handling concentrated cotton at the Turning Basin Plant of the Weatherford Crump Company at Houston, Texas; the method of handling therein indicated is almost identical with the method of handling used by Harriss, Irby & Vose at the Union Compress Company, and it is also applied as far as possible to any customer who desires [fol. 287] that character of service (R. 862). It is seldom that we have a customer to sell cotton by tags on the bales, but we do do it; we prefer not to. The general practice is to store the customer's cotton in even running lots and bales. The Union Compress and the other City Compresses, where they earn compression, absorb the expense of delivery to City Front Docks. When we make such deliveries, the great bulk of it is handled by dray. We prefer to handle it by dray, because it is economically cheaper. We make a contract with a drayman to furnish us with sufficient drayage to operate the business. We pay them a certain price per bale; we have exclusive jurisdiction over the cotton, but their men do the work. The cost is 25¢ per bale. It is the uniform price contracted for where we

earn the (R. 863) compression. Where we do not earn the compression, there is a different rate; it ranges from 25¢ to 40¢, and in the case of the Alamo Warehouse it is 55¢. The charges for the various services under the tariffs operated by the City Compresses are substantially the same as those operated by the Public Cotton Warehouse with one or two exceptions. The storage per day in the City Compress is 1¢ per bale per day, at the Cotton Compress it is 7/10¢ per day; the delivery to the cotton wharf on cotton not compressed by the Cotton Warehouse is 15¢ per bale, while with us, we having no adjacent wharf, our delivery charge is necessarily higher (R. 864). Our delivery charge to the wharf adjacent to the Public Cotton Warehouse would be the same as the charge to any other City Front Wharf where we earned the compression.

(Green's Exhibit A-32, a tariff of the charges operated by the so-called City Compresses and Warehouses effective August 1, 1923, was received in evidence.)

Sampling, tagging, and weighing of cotton, is performed by the New Orleans Cotton Exchange on an agreement entered into by the Cotton Exchange and the Cotton Merchants. The grading is done exclusively by graders employed by the firms themselves. In the case of the Union Compress Company, which is operating under a Federal License, our grader having a thorough federal license to [fol. 288] grade cotton, is entitled to place the grade of that cotton on the warehouse sheet. That is exclusively a feature of the Union Compress Company, however, due to its being under federal license not enjoyed by other compresses. Consequently the grading of cotton is in no cases done by the other (R. 865) compresses. The practice of absorbing the expense of delivery to shipside where compression is earned began the 1st of August; it was done to meet competition at other ports, Galveston in particular.

Cross-examination:

Out of the flat charge that we make for compressing and delivering cotton to shipside, we make nothing out of the drayage charge. The effect of it is that we are compressing cotton for 50¢ per bale. We keep our records so that we can show separately the transit cotton from the cotton upon

which we perform concentration service (R. 866). That is presumed to be done by all the compresses.

WITNESS H. JEPPERSON

I am Vice-President and General Manager of the New Orleans Compress Company, Inc. That facility is located at Shrewsbury. It is not adjacent to the river. The movement of cotton to the waterfront is accomplished either by switch movement or by drayage. Anderson Clayton & Company owns the controlling interest in that facility. We handle cotton for other parties besides Anderson Clayton & Company (R. 867). It is operated as a public facility and available to anyone who desires to do business there, in all respects the same as the Public Cotton Warehouse and so-called City Compresses. I have seen Exhibit A-15, introduced by Witness Gillespie, outlining the method of handling cotton in the Turning Basin Plant of Weatherford Crump & Company in Houston; the method of handling cotton there as practised by New Orleans Compress Companies substantially, is the same as that practiced by Anderson Clayton & Company on its cotton. Some of the customers' cotton is handled in like manner; other custom-[fol. 289] ers have a little different handling, some is handled by what we term tag numbers. Anderson Clayton's Cotton is graded and marked. One of our particular customers, grades and marks his cotton in lots of 50 and we set it back in lots of 50. The other customer sets it back in grade sheets and orders it out by tag numbers as he sees fit. We store the latter customer's cotton by tag numbers and not in even running lots and grade marks. That is usually because the customer does not have a sufficient amount of cotton out in sufficient time to set it back by grade marks. As a compress, we would prefer to do that. The tariff which we operate at the New Orleans Compress Company is substantially the same as that of the Public Cotton Warehouse, and so-called City Compresses at New Orleans. I think there is a little difference between the storage rate between the City Compresses and our Compress. We operate the 7/10¢ per bale per day, like the Public Warehouse; We also effect delivery to shipside where we earn

the compression (R. 869). We make that delivery as a rule by railroad car. It is more economical to do that than to dray it. The drayage charge per bale from the plant of the New Orleans Compress Company to the so-called City Front is 70¢ per bale. When we switch, it costs about 23¢ to 25¢, depending on the location. That includes the cost of loading it to the cars where we do the compressing. If we do not do the compression, we charge that in; when we do not earn compression, we undertake to effect delivery at a charge of 25¢ per bale; we are forced to do that where we have to meet competition (R. 870). It is less than our actual expense of accomplishing that delivery. Our plant is about one-half mile from the water front; we have no cotton moving out from that compress by water without switch or dray movement. There are no dock facilities on the water front half a mile removed from our plant. The Public Cotton Warehouse is the nearest dock facility from our plant—about six miles (R. 871). The practice of absorbing the expense of delivery to shipside, where compression was earned, was inaugurated by our company on [fol. 290] August 1st, 1923; prior to that time we had not undertaken to absorb that expense. We met it for purely competitive reasons.

Cross-examination:

We make a charge for concentration, which does not include the cost of delivering the cotton to the car. The charge for delivery to the car is absorbed in the 25¢ switching; delivery to the car for domestic points would be 10¢, just as where the cotton moves under the dray service (R. 872). In order to meet the competition of other compresses, we load the cotton into the car, pay the switching and pay for the unloading at shipside. On cotton that goes through and is compressed, we absorb that; we make a charge of 25¢ on cotton that we do not compress that is delivered to shipside. It covers the loading, the switching charge and the unloading at shipside. I do not know whether or not there is in the tariff a charge of 10¢ per bale for loading into cars in addition to the 25¢ switching charge when cotton is not compressed by our plant. We do not charge 35¢ (R. 873). Our records are so kept that one can easily ascertain which cotton is transit cotton and which cotton has been

rendered warehousing and concentration service by our press; we do not issue warehouse receipts on compress in transit cotton. Cotton may be delivered to the depot or railroad facilities that are situated near the river front, such as the Illinois Central warehouse, by the cotton shipper himself. When cotton is received in the storehouse of the Illinois Central warehouse, it can be handled from there to shipside identically as at any compress, with the exception of compressing. It can be trucked from their storehouse to shipside by hand truck, but they use motor trucks because it is quicker, or cars (R. 874). The shipper can have that cotton sampled and graded while it is in the Illinois Central warehouse adjacent to shipside; he can perform any service he wants to except compressing. When they move it out from their storehouse to shipside, their charge is 5¢ per 100 lbs. or 25¢ per bale, the difference be- [fol. 291] tween the depot rate and the shipside rate. The cost of trucking cotton from our warehouse and delivering it to the dray or to the railroad cars, for which we charge 10¢ per bale, where we do not perform the compressing, would be there whether we absorb it or not, since we would have to perform the service. I do not know what the exact cost is; it varies according to the distance of the haul. If you have a warehouse 1,000 or 1,200 feet long, and happen to have (R. 875) a bale near the end, it wouldn't cost as much as if you took that from one end to the other. On the average, it costs at least 10¢ per bale. I do not know whether our firm contemplates erecting dock facilities near to or adjacent to the warehouse.

WITNESS E. E. BOWMAN

I am with Stewart Bros., Cotton Company, Inc.; we are shippers to domestic mills and exporters. We concentrate all cotton that we have coming to New Orleans. We handle cotton at other points as well (R. 876). All the cotton that we concentrate here is tagged and merchandised; we store it by tag numbers. Each interior shipping mark purchased through a factor is merchandised and then the cotton is stocked according to the bale. We assemble the different bales according to tags, and the stock records (R. 877).

From our records, we know instantly how many bales of the given lot and staple we have, after it is re-classed. Probably two or three per cent of our cotton is not merchandised; that part may be handled at the railroad. It comes into the railroad on a local bill of lading, and is there classed and graded and forwarded to shipside, at least a part of it is and the remaining portion is stored. It would be stored in compresses. We handle that small percentage so that if we need a few bales to complete a mark, we would have it, but most of the time it is handled through the warehouse proper (R. 878). We have had some from eastern territory, but not from western territory, handled by the I. C. on the shipside rate, but the portion which we handled [fol. 292] at the railroad we elect to dray ourselves from the railroad depot to shipside. We do not know what disposition we are going to make of that cotton until after we have determined its class, and they charge the domestic rate.

Cross-examination:

The even running grades are kept in a stock record in our office, but the cotton in those even running grades (R. 879), say a 50 bale lot, may be taken from 45 different shipments. We have to get it physically in order when we ship it out. We do not own a warehouse; we concentrate the greater portion at the Dock Board warehouse; we seldom use other facilities. The exporter buys from the interior merchant, the warehouse, or he may have his Agent in the interior. The practice of a producer being the shipper into New Orleans is not generally followed with us (R. 880). In New Orleans as a whole, the cotton is assembled by factors, which has always been a business of some considerable importance.

WITNESS RALSTON F. GREEN RECALLED

When we do not earn the compression we assess against the shipper the cost of trucking cotton from points in our warehouse to the drays. There is a certain volume of work attached to assembling of the various marks into the block lots for the shipper who chooses to have his cotton drayed out in its original condition as received by us

(R. 881). In that instance, we charge him 10¢ per bale for that labor. The cost is about 7, 8 or 9¢. It embraces the actual labor of segregating the cotton in marks or in single numbers or in lots as ordered by the shipper, the clerical work and delivering to the drayman and the necessary supervision of the plant. We attribute 5¢ per bale of that charge to the labor of trucking.

WITNESS F. COCKRELL

I represent Anderson Clayton in the eastern states, for the south Atlantic States (R. 882). I have been in the cot-
[fol. 293] ton business about 25 years and have been in Savannah, Ga., for the past 7 years, in charge of the buying and selling and assembling of cotton for the Anderson Clayton & Company moving through Savannah. I am familiar in a general way with the method of handling cotton in Savannah. There are cotton warehouses in Savannah located adjacent to the water front and also some located back of the water front. The Steamers come to Savannah and tie up at one of the railroad terminals, usually certain Steamship Lines have certain terminals, and whatever cotton that is on that particular terminal is trucked to the ship either by handtruck or electric truck (R. 883), and the balance is trucked from the other terminals to what is known as the lighter berths of the other terminals and lightered up there. From the compresses back of the water front, the cotton is drayed to the water front, what is known as lighter berths and from there is lightered on up to the steamer. Cotton coming into the various warehouses, whether adjacent to the water or back of the water, pays the local Savannah rate. If it is handled off to shipside by the railroads, or over the railroad facilities, an additional charge of 25¢ per bale, or 5¢ per 100 lbs., is made. The shipper receiving cotton there in the warehouse and concentrating it, can surrender his receipts and handle the cotton in any manner he wants to. In taking the cotton from one warehouse located on the water, the cost to the cotton shipper of getting that cotton out of the warehouse, putting it on the lighter and taking it to shipside is usually 15¢ per bale. From the warehouse to the

lighter berth, and then 15¢ a bale from the lighter berth onto the Steamer where the compress does not perform the service of compression. I am familiar with the general plan and location of the Savannah Compress and Warehouse Company. I am also familiar with the location of the Long Reach plant of the Houston Compress Company at Houston. Their locations are exactly the same; they are both on the river front and have their own wharf property. At the Savannah Compress and Warehouse Company, there are warehouse compartments at which cotton is concen- [fol. 294] trated; they are back from the river, some of them. Cotton from those warehouse compartments is discharged at the local rate into Savannah, and then a charge of 15¢ per bale (R. 885) is made by the Compress Company for trucking from these back of the water warehouses to the lighter berth, and then the lighter charge is 15¢ per bale from there on.

At Charleston, there are three big warehouses and Compress Companies owned by three separate corporations, each corporation being owned by a firm of cotton dealers, and they are all located on the river. The river at Charleston is very wide—almost a bay. There are also railroad terminals as at Savannah, each of these being located on the water front, and the Steamer usually comes in to load at the plant having the most cotton to give her and the balance is lightered up to the Steamer unless there is sufficient to justify their moving it. Each of these three warehouses located at waterside is equipped also with a compress for high density. They handle cotton for other cotton merchants than the merchants who own the compress companies (R. 886). Our company has shipped cotton through those facilities; cotton is concentrated in their warehouses just as it is in the warehouses back of the waterfront, and they make a charge for delivering at shipside. They pay the local rate into the warehouses at Charleston (R. 887). The same situation exists at Wilmington, and at Norfolk. Various concerns own the Savannah Compress and Warehouse Company; no one concern owns the controlling interest (R. 889). Other cotton firms and steamship agents are interested.

Cross-examination:

I would not say whether or not there is a movement of cotton from the southwest to Savannah; there has been in the past, in the last few years, but it has been very small. The same applies to Oklahoma. Ships do not dock at the Savannah Compress & Warehouse Company facilities; all [fol. 295] cotton from there is lightered. When the compress was built about eight years ago, the Central *and* Georgia Railway had spent several (R. 890) million dollars on a brand new terminal, and before they would put in their switching facilities into the new plant, they required an agreement not to load Steamers there, which agreement does not expire for two years more; when it does, in all probability Steamers will load there. There are no railroad facilities at Wilmington.

WITNESS T. HUGH CURLEY

I am Chief Clerk to Mr. H. L. Graham, of the Louisiana Railway and Navigation Company; I have been with that railroad about 14 years (R. 891). There are two rates to New Orleans, one which applies for shipside delivery and the other for depot delivery. If the way bill shows for export, we assess the export rate, and if there isn't anything on the way bill to indicate, our advance orders would indicate the movement of the car whether we are going to unload it or what disposition is going to be made of it, and we have it arranged in our office that if the shipment does not indicate what disposition is going to be made when the order comes to the billing clerk, he will tell us that that car is going to be ordered to shipside, then we will investigate the rate and see whether it will take the export or the domestic rate. That applies to carload shipments. On less [fol. 296] than carload shipments, unless the way-bill indicates that shipment is for export, we assess the domestic (R. 892) rate on it. Then if we are called upon to make shipside delivery we then investigate the rate as to whether there will be any changes, or additional charges for shipside delivery. If we find that the shipment is to be ex-

ported, we assess the export rate. If it should be from a point where the rate includes shipside delivery, there would not be any charges. The origin of the instruction on the way-bill is the bill-of-lading which the shipper himself makes out.

Cross-examination (R. 893):

I would say that 75 per cent of the cotton originating in Louisiana moves into New Orleans on the Domestic rate, the intrastate rate. In some instances the intrastate and the interstate rates are the same, in some they are not. On the rate from Shreveport, while there is an I. C. C. number of the 70½¢ rate, there is another tariff that defines specifically that this tariff should apply on intrastate shipments of 74½¢. There is no doubt that (R. 894) tariff may be intended to take care of export shipments, but it does not say so. I know of only two different rates and two different routes from Shreveport to New Orleans.

WITNESS J. D. WEBB

I am foreign freight agent for the Texas and Pacific Railway. The export rates in all cases is collected on cotton on the bill-of-lading which is the shipping document or way-bill. The information on the waybill or bill-of-lading, if there is any evidence of exportation or de-[fol. 297] livery order indicating exportation, the export rate is assessed. If not the domestic rate is assessed, whether it is one bale or one hundred bales. There is quite a good deal of cotton unloaded from railway terminals by the Railways and ranged and handled from terminals to compress warehouses and shipside. Wherever a bale of cotton is unloaded there and is ordered to shipside, we immediately raise the rate to the export rate if it has already (R. 895) been delivered on the domestic basis. That class is getting less each year; I think last year we had some 25,000 or 30,000 bales handled that way, but it was not all export.